

**IN THE MATTER OF THE COMMISSION ON HUMAN RIGHTS AND  
ADMINISTRATIVE JUSTICE ACT, 1993 (ACT 456)**

**AND**

**IN THE MATTER OF A COMPLAINT UNDER CHAPTER 24 AND  
ARTICLE 218 OF THE 1992 CONSTITUTION**

**CASE NO.: CHRAJ/ 297/2019**

**BETWEEN**

**GHANA INTEGRITY INITIATIVE - COMPLAINANT  
ACCRA**

**AND**

**MR. ADJENIM BOATENG ADJEI  
AND NINE OTHERS - RESPONDENTS**

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**DECISION**

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**INTRODUCTION**

Articles 284, 286 and 287 of the 1992 Constitution provide for the following:

*“Conflict of Interest*

**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.**

### *Other Public Appointments*

**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, 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 of 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.**

### *Complaint of Contravention*

**287 (1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter [Chapter 24] 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 for Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission”.**

The Constitution further provides for the functions of the Commission in article 218 (a) and (e) as follows:

**“(a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair**

**treatment of any person by a public officer in the exercise of his official duties;**

**(e) to investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials ...”.**

On 4th October, 2019 the Commission received a complaint from the Ghana Integrity Initiative (GII), a Local Chapter of Transparency International (TI), alleging contravention of provisions of Chapter 24 of the 1992 Constitution, corruption and inappropriate conduct by Mr. Adjenim Boateng Adjei, former Chief Executive Officer (CEO) of the Public Procurement Authority (PPA), (1<sup>st</sup> Respondent), members of the Board of the PPA (at the material time) and officials of Talent Discovery Ltd (TDL) as follows:

#### **PPA Board Members**

- |                                 |                              |
|---------------------------------|------------------------------|
| 1) Prof. Douglas Boateng        | - 2 <sup>nd</sup> Respondent |
| 2) Hon. Godfred Dame            | - 3 <sup>rd</sup> Respondent |
| 3) Mrs. Ernestina Swatson Eshun | - 4 <sup>th</sup> Respondent |
| 4) Mr. Richard Nii Baidoo       | - 5 <sup>th</sup> Respondent |
| 5) Dr. Emmanuel Yaw Boakye      | - 6 <sup>th</sup> Respondent |
| 6) Mr. Francis D.K. Owusu       | - 7 <sup>th</sup> Respondent |
| 7) Mrs Stella D. Williams       | - 8 <sup>th</sup> Respondent |

#### **TDL Officials**

- |                         |                               |
|-------------------------|-------------------------------|
| 8) Mr. Francis K. Arhin | - 9 <sup>th</sup> Respondent  |
| 9) Thomas Amoah         | - 10 <sup>th</sup> Respondent |

The alleged contravention of provisions of the Constitution relates to Conflict of Interest, Corruption, illegal acquisition of assets and Non-Declaration of Assets and liabilities, among others.

#### **BACKGROUND**

The circumstances that triggered this complaint relate to the airing of a video documentary produced by Manasseh Azure Awuni on Joy TV News

Channel of the Multimedia Group, on Wednesday, 21st August 2019, titled "Contracts for Sale".

Following the broadcast, the President of the Republic of Ghana immediately suspended the CEO of the PPA (1<sup>st</sup> Respondent), and subsequently referred the allegations of conflict of interest in the documentary to the Commission on Human Rights and Administrative Justice (CHRAJ), and that of corruption and sale of contracts to the Office of the Special Prosecutor (OSP) for investigations in respect of their mandates and appropriate action. The Commission submitted the result of its investigations and recommendations on that conflict of interest case and other related matters to the President of the Republic for necessary action.

The Complainant herein, GII, lodged the instant complaint requesting the Commission to, among others, investigate:

*"...the Chief Executive Officer of the Public Procurement Authority (PPA), Adjenim Boateng Adjei (suspended by His Excellency the President of Ghana, Nana Addo Dankwa Akufo Addo), and the following persons for their alleged involvement in "...corruption, conflict of interest, collusion and inappropriate conduct in violation of the Constitution and laws of Ghana for which appropriate sanctions should be applied":*

Although the Commission has the mandate under the Constitution of the Republic of Ghana to investigate, among others, *"all instances of alleged or suspected corruption and the misappropriation of public monies by officials ..."*, the Commission decided to restrict its investigation to the allegations of conflict of interest, illicit enrichment, non-declaration of assets and liabilities, and inappropriate conduct by the Respondents. The allegation of corruption is similar to one referred to the OSP by His Excellency, the President of the Republic, which is being investigated by the OSP.

The Commission received comments from Adjenim Boateng Adjei, Francis Arhin and Thomas Amoah, through their lawyer, Kwaku Owusu-Agyemang, Esq. of K-Archy & Company.

In addition, the Commission received comments from Members of the Board of the PPA. It also received and analysed information from more than twelve institutions, interviewed about twenty-three persons, and reviewed the video documentary produced by Manasseh Azure Awuni.

## **THE COMPLAINT**

The particulars of the complaint made against the Respondents by GII relate to conflict of interest, illicit enrichment, non-declaration of assets, corruption, and inappropriate conduct, among others.

The allegations include the following:

- i. That Adjenim Boateng Adjei and the other Members of the Board of the PPA have allegedly been involved in corruption, conflict of interest, collusion and inappropriate conduct in violation of the Constitution and laws of Ghana for which appropriate sanctions should be applied.
- ii. That Adjenim Boateng Adjei established companies soon after he was appointed as Chief Executive Officer of the Public Procurement Authority without disclosing his interest.
- iii. That after establishing the companies, Adjenim Boateng Adjei used his public office for private gain, which conduct is prohibited by the Constitution, the Public Procurement Act, 2003 (Act 663), and Chapter 5 of the Criminal Offences Act, 1960 (Act 29).
- iv. That in order to facilitate his companies win contracts, Adjenim Boateng Adjei either directly or indirectly disclosed procurement related information to his companies unlawfully and, amongst others, enabled a company less than three years old win high value contracts.

- v. That the companies that Adjenim Boateng Adjei established, allegedly subletted, subcontracted or “sold” contracts awarded them by the procurement entities of the State without the consent of the said entities.
- vi. That by the subletting, subcontracting or “selling” of the contracts to other contractors and suppliers, Adjenim Boateng Adjei enriched himself illegally and placed himself in contravention of Article 286 of the 1992 Constitution and his actions should be investigated, he should be sanctioned, and the illegal assets he acquired should be confiscated to the State.
- vii. That the conduct of Adjenim Boateng Adjei could not have occurred without the collusion of and inappropriate conduct by the Board of the PPA, for which reason the actions of the other members of the Board should also be investigated and those found culpable should be sanctioned including recovery of money or other assets that any Board member might have acquired through the collusion and inappropriate conduct.
- viii. That TDL, a company less than 3 years old could not have won and “sold” contracts without the involvement of some public officers in those institutions whose contracts TDL won and “sold”.

Therefore, GII urges the Commission to also investigate the officials of TDL, especially Thomas Amoah as well as those public officers of procurement entities for their involvement in corruption in the award of contracts to TDL and the “sale” of those contracts. In order not to allow these persons benefit from the illegal wealth they may have acquired through corruption, investigation should be conducted and illegal wealth retrieved for the State.

The Complainant then urged that “in order not to allow these persons benefit from the illegal wealth they may have acquired through corruption, investigation should be conducted and the illegal wealth retrieved for the State”.

According to the complainant, it “...sought, received and reviewed the following evidence forming the basis of this Complaint:

- i. *Investigative documentary by Manasseh Azure Awuni*
- ii. *The Ministry of Education Contract with Talent Discovery Limited*
- iii. *Ministry of Works and Housing Contract with Talent Discovery Limited*
- iv. *Ministry of Roads and Highways Contract with B-Mole Limited*
- v. *Ghana Ports and Harbours Authority Contract Award Letter for Talent Discovery Ltd.*
- vi. *Registrar General’s Department search results on Talent Discovery Limited*
- vii. *Registrar General’s Department search on ABM Logistics Limited*
- viii. *Registrar General’s Department search results on Frosty Ice Natural Mineral Water*
- ix. *Registrar General’s Department search results on TDL Freight Forwarding*
- x. *Request for Information from the Board of Public Procurement Authority*
- xi. *Response from lawyers of Talent Discovery Limited*
- xii. *Query and response from Thomas Amoah, General Manager of TDL*
- xiii. *Receipts from Talent Discovery Limited*
- xiv. *Contractors Registration Form from Talent Discovery Limited”*

**Extracts of the Documents provided by the Complainant include:**

- Investigative documentary by Manasseh Azure Awuni:

The documentary shows that Manasseh Azure Awuni used a shell company by name K-Drah, supposedly owned by a brother of Richard Kumadrah who is based in London, to contact TDL ostensibly to purchase a contract,

and recorded his conversation with one Thomas Amoah, the General Manager of TDL. With the recording, Manasseh then contacted the 1<sup>st</sup> Respondent, the PPA, TDL and others mentioned in the recording for their comments or reaction.

In the documentary:

i. Richard Kumadrah went to TDL, where he met Thomas Amoah, the General Manager (GM), and expressed interest in buying contracts. Thomas Amoah told Richard that the Company gives the contracts to outstanding buyers because the terms were very favourable and offered to sell a contract worth 158,900 Cedis to Richard. Thomas Amoah showed Richard the award letter to TDL dated 20th June 2019, which was a contract for the supply of column lift for the Ghana Ports and Harbours Authority (GPHA).

ii. Though Thomas Amoah showed Richard the award letter for the contract, he would not hand over the documents to Richard until an agreement was reached and payment of a “commitment” fee of 5,000 Cedis was made;

iii. Thomas Amoah further informed Richard that TDL had “Suppliers and Contractors’ Registration Form” and that any contractor they engage [TDL engages] pays a fee of 5,000 Cedis to register with TDL. According to him, *“When that amount is paid, any time there is an award of a project, we open up to the supplier or contractor to hear from him if the supplier is interested. There are cases they can come into negotiations on percentage wise and even use the company’s details for a direct contract award. That is what they do so once a contractor registers with us, we are good to give any information we have to enable him to work”*;

iv. Thomas Amoah insisted that without the registration, no information would be given unless Richard was prepared to purchase the contract “outright”, following which Richard made a payment of 5,000 Cedis to Thomas to register and was provided a receipt of

payment on the letterhead of TDL. Richard also paid 10,000 Cedis as deposit for a contract and was also provided a receipt on the letterhead of TDL;

v. On payment of both the registration fee and the deposit, Thomas Amoah called Abigail, a Secretary at TDL, to bring the documents on the Santa Maria drainage contract and the Column Lift contract from Ghana Ports and Harbours Authority (GPHA), which she did;

vi. Thomas Amoah made the following remarks in respect of the Santa Maria drainage Contract to TDL, *"...I actually sold it to somebody. The person does not have the funds to carry out the project. That is what is happening so I have agreed with the person, I will sell it to another person who has funds and give him his refund, the initial deposit he paid. He has agreed so that side we don't have issues";*

#### Response from Solicitors of Talent Discovery Limited:

Solicitors of TDL, SIMA, responded to a request for comments by Manasseh dated 19th August 2019. They wrote:

*"...Dear Sir,*

*RE: REQUEST FOR RESPONSE*

*We act as Counsel for Talent Discovery Limited (TDL) whose instructions we have to respond to your letter on the subject dated 14th August, 2019 as follows:*

*1. That our client is not in the business of selling government contracts. Mr. Thomas Amoah is an employee of our client and had no authority to do what your investigation allegedly revealed for which reason he is deemed to have acted purely on his own and has committed a grave misconduct and liable for the appropriate sanctions from the company, therefore. Already, disciplinary measures have been initiated in accordance with the Company's policies.*

2. That our client (TDL) has no such thing as “LINKS at the top” since it operates in the market and competes for jobs like other players. That being the case, any such attribution to Mr. Adjenim Boateng Adjei is diversionary. You are to note specifically that Mr. Adjenim Boateng Adjei, a one-time Promoter and Director of TDL no longer holds such positions as he had since long resigned.

3. That TDL has all relevant licenses and/or certificates from the ministry to which your request relates, which information is available on request.

4. That your question whether our client had the permission of any of the MDAs to “sell their contracts to third parties” is moot and speculative in view of the earlier statements herein. Further, with regards to your question whether TDL sells contracts, we wish to repeat that TDL is not in the business of selling contracts. However, subletting is a permissible general contract term provided for in all contracts. TDL has not entered into any subletting contract and it is not in negotiations with any entity to do same. To this end, the employee of the Company who allegedly sought to engage another entity to participate in the execution of contracts in the name of TDL was on the frolic of his own and had no authority to make any such representations on behalf of the company,

We hope the response herein would satisfy your purpose. The appropriate officer of TDL is standing by to grant you audience any time, at your convenience. Thank you....”

## COMMENTS FROM RESPONDENTS

### Written Comments from Mr. Adjenim Boateng Adjei

In accordance with article 287(1) of the Constitution, the Commission requested Adjenim Boateng Adjei (1<sup>st</sup> Respondent), in letters dated 4<sup>th</sup> November 2019 and 3<sup>rd</sup> March 2020 to confirm or deny the allegations, and if he denied, to state so expressly.

In a letter dated 10<sup>th</sup> March, 2020, titled, “RE: ALLEGATIONS OF CONTRAVENTION OR NON-COMPLIANCE WITH CHAPTER 24 OF THE 1992 CONSTITUTION AND THE PUBLIC OFFICE HOLDERS (DECLARATION OF ASSETS AND DISQUALIFICATION) ACT 1998 (ACT 550) BY MR. ADJENIM BOATENG ADJEI, THE BOARD OF PUBLIC PROCUREMENT AUTHORITY AND OTHERS – REQUEST FOR COMMENTS,” signed by his solicitor, Kwaku Owusu-Agyemang Esq. of K-Archy & Company, Mr. Adjei submitted his comments to the Commission.

He denied the allegations and described them as “...*baseless, have no standing in law and merely a fishing expedition to find fault and illegality in respect of the activities of our client which attempt has failed woefully...*”.

He then presented the comments under various subheads. On the allegation that “*Mr. Adjenim Boateng and other members of the Board of the PPA have allegedly been involved in corruption, conflict of interest, collusion and inappropriate conduct in violation of the Constitution and laws of Ghana*”, Mr. Adjei denied the allegations in its entirety and asserted that at no point in time did he, whether acting alone or in concert with any official at the Public Procurement Authority (PPA), especially members of the PPA Board, involve himself in any conduct in the nature of conflict of interest, corruption and inappropriate conduct in violation of the constitution and laws of Ghana. He stated that at all material times, he and the Board of the PPA have conducted their affairs in a manner that is in compliance with the laws of the Republic of Ghana and indeed above reproach.

Mr. Adjei submitted that “...*from the reading of the entire complaint, the acts in support of the allegations of conflict of interest, corruption and inappropriate conduct, the essential elements of the allegation are absent and unsubstantiated. The Complainant fails to show how [AB Adjei] and the PPA Board engaged in corruption of conflict of interest. That the allegation is a bare one with no fact or evidence to substantiate same. ...Therefore the complainant is put to strict proof thereof.*”

With regard to the allegation that *“after establishing the companies, Mr. Adjei used his public office for private gain”*, Mr. Adjei reiterated that at no point in time did he abuse his office for private gain. He maintained that the complainant has failed to show in what manner he abused his office for private gain. That there is nothing in the allegation that would show that Mr. Adjei abused his office.

Turning onto the allegation that *“on the face of the documents that the Complainant received and reviewed, Mr. Adjenim Boateng Adjei established companies soon after he was appointed Chief Executive Officer of the PPA”*, Mr. Adjei said that he did not see how the establishment of companies at any point in time of his life, be it before or after his appointment as the Chief Executive Officer of PPA, is relevant in establishing a contravention of any provision contained in Chapter 24 of the 1992 Constitution. He submitted that there is nothing under Chapter 24 aforementioned that prevents him from establishing companies and that apart from the fact that public officers are required to avoid conflict of interest in situations where their official duties are likely to conflict with their personal interests, there is nothing that prevents public officers from establishing companies. He contended that:

*“If the present allegation is anything to go by, then any time a public officer acquires shares in any company, whether private or public, then a contravention of Chapter 24 is anticipated. We submit that the allegation is empty, at large and does not relate to any breach of any law in the Republic of Ghana.”*

Mr. Adjei stated that he had studied the documents from Registrar General’s Department attached to the complaint and found that apart from TDL Ltd, the information relating to ABM Logistics Ltd, Frosty Ice Mineral Water Ltd and TDL Freight Forwarding Ltd are irrelevant to the complaint before the Commission

Mr. Adjei wondered what procurement activity has a mineral water producing company like Frosty Ice undertaken that contravenes Chapter 24. Furthermore, nothing has been said about ABM Logistics registered 2007 and TDL Freight Forwarding Ltd in respect of any procurement activity and so one wonders why documents on these companies have been attached to the complaint. Counsel for Mr. Adjei further stated that:

*“it appears that the purpose of the attachment is to show that our client has interests in these companies and we say that fact alone is not proof of contravention of provisions in Chapter 24 of the 1992 Constitution”.*

In terms of the *allegation that in order to facilitate his companies win contracts, Mr. Adjeinim Boaeteng Adjei either directly or indirectly disclosed procurement related information to his companies unlawfully and among others, enabled a company less than three years old to win high value contracts*, Mr. Adjei said that:

*“...the gravamen of the allegation is that TDL was in receipt of procurement related information given to it by AB Adjei in his capacity as the CEO of the Public Procurement Authority and that the receipt of such information enabled TDL to win high value contracts.”*

Mr. Adjei contended that at no point in time did he disclose any procurement related information to TDL to enable it win any contract and submitted that the emptiness of the allegation is further betrayed by the fact that the Public Procurement Authority is not in the business of awarding contracts to companies and that he has not influenced the award of any contract to TDL by the Public Procurement Authority (PPA) either as procurement entity or as a regulator.

He continued as follows:

*TDL has conducted its affairs in accordance with the laws of the Republic of Ghana and has not engaged in any conduct in the nature of procurement malpractices. As a Ghanaian company, TDL, in accordance with its objects*

*has the right to seek, enter into and execute contracts for any entity that engages it, including the state. Pursuant to its object, TDL has submitted its profile to various state agencies and procurement entities to consider the company alongside other companies in the search for and award of contracts by such procurement entities. Mr. Francis Kwaku Arhin, the CEO of TDL has been at the forefront engaging procurement entities and making a case for why TDL should also be listed to participate in competitive tendering for possible award in event that it is considered to be the most successful evaluated responsive bidder.*

He also said that pursuant to the efforts by Mr. Francis Kwaku Arhin, TDL was shortlisted among other firms on 15 occasions by procurement entities in Ghana to participate in restricted competitive tendering which by law the entities are required to seek prior approval from PPA in accordance with Sections 38 & 39 of Act 663 as amended. PPA by its mandate only assesses the statutory requirement of the entity and justification provided by the procurement entities to grant them approval or otherwise to enable the procurement entities undertake the necessary procurement processes.

According to Counsel, the first time TDL appeared among other shortlisted companies in an application by a procurement entity for the use of the restricted tender method, Mr. Adjei declared his interest in the said company. He attached a copy of the Resolution of the Board of Directors of the PPA on the declaration and disclosure of interest by Mr. Adjei at a meeting of the Board of PPA, with the heading, **“RESOLUTION ON DECLARATION AND DISCLOSURE OF INTEREST”**, as Exhibit AB 1, which provides:

*“Whereas at the 8<sup>th</sup> Board Technical Meeting held on Wednesday 17 January 2018, the Chief Executive, Mr. Adjenim Boateng Adjei, disclosed that he had an interest in a company called Talent Discovery Ltd., and wanted the Board to take note of this and subsequent applications that may come up for consideration; and*

- *Whereas Mr. Adjei subsequently recused himself from discussions on the application concerned.*
- *Whereas he went further to state that as and when he becomes aware of any application made by an entity, which includes the company in question he will recuse himself from both the assessment of the application and the Board consideration.*
- *Now therefore, the Board duly took note of his declaration and disclosure and resolved that having declared his interest in the company Talent Discovery Ltd., Mr. Adjei be duly recused from consideration of his application, all other subsequent applications and the assessment of such applications.*
- *SIGNED at the Public Procurement Authority, Accra dated Wednesday 17<sup>th</sup> January 2018”.*

Counsel wrote further that Mr. Adjei, who was one time a director and shareholder, had resigned from his position as director of TDL and has never been actively involved in the activities of the said company. He attached a copy of the said resignation letter, “**RESIGNATION AS DIRECTOR AND CHAIRMAN OF TALENT DISCOVERY LIMITED**”, (as Exhibit AB 2), which provides:

*Following my discussion with your good self on the above subject matter, I wish to officially bring to your attention my decision to resign as a director and therefore the Chairman of the board of Talent Discovery Limited effective 5<sup>th</sup> September 2017.*

*The decision has become necessary due to my increasingly busy schedules which will likely affect my availability to attend to the needs of TDL as director and chairman.*

*I shall trust upon you to effect the necessary changes by reason of my resignation. Thank you*

*Yours faithfully,*

*AB Adjei*

CC: The Company Secretary  
Talent Discovery Limited

In the circumstances, 1<sup>st</sup> Respondent has not acted in any manner that placed him in a conflict-of-interest situation and none has been proven.

In an attempt to prove the allegation, it was alleged in the said documentary that on one occasion, TDL's bid was so close to the contract price that it could only have been possible because procurement information was disclosed by our client to TDL. The suggestion is preposterous because a study of the Evaluation Report on the 25 lots in that particular contract would show that there were several other close bids from about 75 bidders. It cannot be the case that 1<sup>st</sup> Respondent informed all the other bidders who gave a close offer. In any case, the contract price is also available to officials of the procurement entities and so there is no basis for the suggestion that an offer which is close to the contract price could only happen because our client disclosed the said information to TDL. The allegation is also spurious on the face of it when it is considered on the basis that it is the likelihood of the disclosure of such information that had led TDL to win high value contracts even though it is less than 3 years old. The complaint does not define what a high value contract is and it also does not state how many years a company must be in existence to win such contracts. He threw a challenge to the complainant to state the value of the contract won by TDL which are considered as high value contracts.

In conclusion, the 1<sup>st</sup> Respondent said, the allegation herein is baseless and cannot be substantiated. The Complainant is therefore put to strict proof of the following:

- a. The nature of procurement related information that was disclosed by our client to TDL;
- b. The date and manner of the said disclosure by our client to TDL, and
- c. The contracts in respect of which the aid information was disclosed by our client to TDL.

Mr. Adjei denied the allegation that *“the companies that Mr. Agyenim Boateng Adjei established allegedly subletted, subcontracted or “sold” contracts awarded them by procurement entities of State without the consent of the said entities.”*

According to him, he had taken time to consider the documents attached to the complaint as well as the actual complaint of the complainant and that there is no basis for this allegation. He asserted that the allegation seems to suggest that Companies established by 1<sup>st</sup> Respondent were all involved in Government contracts which is not wholly true. He stated that “... as matter of fact that TDL, the subject matter of this investigation has never subcontracted or sold any contract and that is the reason why no evidence has been adduced by the Complainant to substantiate its claim. Whilst TDL might have engaged other service providers in the execution of its contracts which is a normal practice in contract execution, same cannot be construed as subletting or subcontracting. The Complainant is therefore put to strict proof of the following matter:

- a. The name and subject matter the contract which was subcontracted or sold by TDL, and
- b. The amount at which the contract was subcontracted or sold.

**On the allegation that “by the subletting, subcontracting or “selling” of the contracts to other contractors and suppliers, Mr. Adjenim Boateng Adjei enriched himself illegally and placed himself in contravention of Article 286 of the 1992 Constitution and his actions should be**

**investigated, sanctioned and the illegal assets he acquired be confiscated to the State,”** Mr. Adjei responded that the allegation is baseless. According to him, the allegation could only be considered if the Complainant was able to show that any contract was subletted, subcontracted or sold and for how much. He said the Complainant failed to show that any contract was subletted, subcontracted or sold and so the issue of whether he has enriched himself or not does not arise.

Counsel further claimed that from the inception of the company up to date, Mr. Adjei has not taken any active part in the running of the affairs of the company and has also not received any financial benefit from the company in any shape or form be it by way of salary, allowance or dividends. He invited the Complainant to prove the following:

- a. Any pecuniary benefit which TDL has bestowed on 1<sup>st</sup> respondent, and
- b. Any such pecuniary benefit was obtained and conferred on TDL through the abuse of office by 1<sup>st</sup> Respondent.
- c. The quantum of the unlawful enrichment of 1<sup>st</sup> Respondent which he had obtained through TDL flowing from the abuse of his office

Mr. Adjei described the allegation that *“the Complainant believes that TDL, a company less than 3 years could not have won and “sold” contracts without the involvement of some public officers in those institutions whose contracts TDL won and sold”* as the weakest link in the chain of unsubstantiated claims against him. He said the allegation suggests that since TDL is less than 3 years old, it was not qualified to win contracts without the involvement of the officers of the institution that awarded those contracts. That the allegation seems to suggest that but for some illegal under dealings between TDL and officers of the awarding entities, it would not have been able to win those contracts given that it was less than 3 years

old. He denied the allegation, describing it is as “...empty and baseless accusation...”.

He said he believes that in all its business dealings, TDL has conducted its affairs in accordance with the laws that regulate its activities and it has not sought to unlawfully influence any government official in its business dealings. That at all material time, TDL had acted like any other company in the Republic of Ghana in its pursuit for business and contracts and at no point in time had it sidestepped any requirements in order to win any contracts or gain any undue benefits. He insisted that TDL has not sold any contract to any person or entity, and that he has not also exerted any influence whatsoever over any public official in the determination of the successful bidder in any competitive bidding process.

Mr. Adjei stated that he has taken note of the fact the present Complaint was brought pursuant to Chapter 24 of the 1992 Constitution and mentioned that having regard to the totality of the complaint before the Commission, it is obvious that the complaint is cognizable under Articles 284 and 286 of the Constitution. He contended that in his capacity as the CEO of PPA, he has never sidestepped any requirement in order to favour TDL in any way. He mentioned an instance when he wrote to a procurement entity to disqualify TDL in a tender process in which TDL had participated but had not presented a responsive offer having regard to the specifications of that particular contract. He attached copies of letters (as Exhibits AB 3 and Exhibit AB 4), which he wrote in his capacity as the CEO of PPA to the Bank of Ghana in which he questioned the said institution as to why TDL had been shortlisted to proceed to the next stage of a tender process when it's offer was not responsive to the minimum specifications stated in the tender documents. The Letters dated 18<sup>th</sup> January 2019 and 28 May 2019 are reproduced below:

18 January Letter (Exhibit **AB 3**):

**“RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDER  
PROCUREMENT METHOD FOR THE SUPPLY AND  
INSTALLATION OF COIN SORTIES FOR BANK OF GHANA**

*We make reference to your letter no. SF/ORG/7/2019/1 of 11<sup>th</sup> January, 2019 in response to our letter No. PPA/CEO/11/1782/18 dated 2<sup>nd</sup> November, 2018) on the above subject.*

*At the Board Technical Committee Meeting No 8 (018/2018) held on Thursday, 1s November 2018, the Board decided that, upon receipt of satisfactory information as requested by the Authority, approval should be conveyed to the Bank of Ghana.*

*We find the additional formation submitted satisfactory and accordingly convey our approval to Bank of Ghana in accordance with Section38 (b) of Act 663 as amended, to use the Restricted Tendering Method to invite the under listed companies to tender for the procurement of five (5) Coin Sorters for the Bank at an estimated cost of 400,0000.00:*

- 1. M/S TALENT DISCOVERY LIMITED**
- 2. M/S ALSALE SERVICES LIMITED**
- 3. M/S SUZOHAPP (SCAN COIN AB)**
- 4. M/S SUSZOU KOBOTEH TRADING CO. LTD.**
- 5. M/S RIBAO TECHNOLOGY**

*This approval is subject to submission of a copy of Evaluation Report, copy of Tender Document and Tenders submitted by Tenders to PPA, prior to obtaining concurrent approval from the relevant Review Committee.*

*You are required to ensure that all documentation regarding this procurement is appropriately kept to facilitate future procurement and tax audits and also you are reminded to post the contract award notice on the Public Procurement Website: [www.ppaghana.org](http://www.ppaghana.org).*

*We count on your usual co-operation.*

AB ADJEI  
CHIEF EXECUTIVE

THE SECRETARY  
BANK OF GHANA  
ACCRA

**ATTN: MRS FRANCES VAN-HEIN SACKEY"**

28 May 2019 Letter (Exhibit AB 4):

**RE-SUBMISSION OF EVALUATION REPORT AND OTHER  
RELATED DOCUMENTS ON THE SUPPLY AND INSTALLATION  
OF COIN SORTERS FOR BANK OF GHANA**

*Please refer to your letter with reference number SF/ORG/7/2019/25 dated 8<sup>th</sup> May, 2019 by which you submitted Evolution Report, Tenders submitted and Tender Document issued to Tenders as requested by our letter with reference no. PPA/CEO/01/40/19 dated 18<sup>th</sup> January, 2019.*

***The review team made these observations and presented below:***

- a. Talent Discovery offered model of Mach 9c wave which does not meet the minimum Technical tender;*
- b. Search on the PPA Supplier Data Base showed no results for Sozuhapp/Scan Coin AB as at 1:00pm, 23<sup>rd</sup> May, 2019, the company provided the Registration Form as proof of registration and evaluation panel failed in their duty to flag the misrepresentation which is an infraction to Section 22 (5) of Act 663 as amended; The email sent by Hamza Sawyer on 14<sup>th</sup> February 2019 in answering the clarifications sought by Sozuhapp/Scan Coin AB reiterated in paragraph 2, third line that "All companies however, must take steps to register with the Public Procurement Authority of Ghana and present the certificate of registration as part of the process as stated in the RFP".*

*In view of the above, PPA cannot grant BoG approval to continue with the evaluation process and further directs BOG to do re-evaluations of the tenders using its pre-disclosed criteria and ensure full application of your minimum specification requirements. You are requested to re-submit your re-evaluated request to the Authority for our review and necessary action. Counting on our usual cooperation.*

AB ADJEI  
CHIEF EXECUTIVE  
THE SECRETARY  
BANK OF GHANA  
ACCRA

Counsel submitted that the said letters bear testimony to the *unassailable integrity of 1<sup>st</sup> respondent when it comes to the discharge of his duties as a public officer and the fact that he would never sidestep the requirements of the law simply because TDL was involved in any tender process. He, in the normal course of his work, without more, refused to bend the rules in favour of TDL.* He challenged the Complainant to also provide an instance where he bent the rules in favour of TDL.

On the allegation of *contravention of Article 286 which relates to the failure by 1<sup>st</sup> Respondent to declare his assets as a public office holder*, Mr. Adjei admitted that he did not declare his assets and liabilities upon assumption of office. He said that the matter was brought to his attention together with other members of the Board and staff of the PPA in an audit report on the PPA which the Office of the Auditor-General issued. He disclosed that in his response to the audit findings, he acknowledged that he had not declared his assets as required by law and noted his preparedness to do so. That not long after, he was suspended by the President of the Republic following allegations made against him. He said he was not averse to declaring his assets as a public officer and he will take steps to do so forthwith.

Counsel for Mr. Adjei concluded his comments by referring the Commission to the dictum of Brobbey JSC in the case of **Okudjeto Ablakwa (No 2) & Another v Attorney General & Obetsebi Lamprey (No 2) [2012] 2 SGCLR 845** thus,

“The Plaintiff’s reliefs failed in so far as they were based on cronyism, arbitrariness, capriciousness, discrimination or conflict of interest. I have had the benefit of reading in advance the opinion of my brother Atuguba JSC, the President of this panel. He dismissed the claims of the plaintiffs in respect of conflict of interest, cronyism, discrimination, arbitrariness, capriciousness and corruption. What that implies is that this panel is unanimous in dismissing the claims of the plaintiffs based on, cronyism, discrimination, arbitrariness, capriciousness, corruption and conflict of interest.... This is a Court of law, court of equity and court of justice. As a court of law, we are governed by rules... Our rules and regulations mandate that people who invite the court to condemn others for the wrong done should be in a position to justify what they call on the courts to do”.

He submitted that based on the case above, the Commission ought to make a determination of the issues presented by the Complainant having regard to the rules and regulations on procurement practices in Ghana, the specific roles of the Board of PPA, the authority of Mr. Adjei in his capacity as CEO of PPA in the procurement process and also establish in what manner he put himself in a conflict-of-interest situation. He argues that the present matter should not admit of conjectures, assumptions, and half-baked facts, and so the Complainant is put to strict proof of the allegations to which he has responded.

**Written Comments from TDL:**

Talent Discovery Ltd (TDL), in a written response dated **19th November, 2019** signed by its Lawyers, Kwaku Owusu-Agyemang Esq. of K-Archy & Company, stated that Mr. Francis Kwaku Arhin, the CEO of TDL, had been at the forefront engaging procurement entities and making a case for why TDL should also be listed to participate in competitive tendering for possible award in the event that it is considered to be the most successful evaluated responsive bidder. That pursuant to his efforts, TDL was shortlisted among other firms on 15 occasions by procurement entities in Ghana to participate in restricted competitive tendering which by law the entities are required to seek prior approval from PPA in accordance with Sections 38 & 39 of Act 663 as amended.

According to TDL, PPA by its mandate only assesses the statutory requirement of the entity and justification provided by the procurement entities to grant them approval or otherwise to enable the procurement entities undertake the necessary procurement processes.

It described as preposterous the allegation in the documentary that on one occasion, TDL's bid was so close to the contract price that it could only have been because procurement information was released by Mr. Adjenim Boateng Adjei to TDL. TDL then stated that a study of the evaluation Report on the 25 lots in that particular contract would show that there were several other close offers from about 75 bidders. That, it could not be the case that Mr. Adjenim Boateng Adjei disclosed information to all the other bidders who gave close bids.

TDL further stated that it was obvious that the PPA has no influence in the award of contracts by the procurement entities.

On the allegation that because of the disclosure of information by Adjenim Adjei to TDL, that led TDL to win high volume contracts, even though it was less than 3 years old, it said that the Complainant did not define what a high-volume contract is and it also does not state how many years a company must be in existence to win such contracts and that the highest

contract ever won by TDL is about GHC1.9 million and others were as low as GHC77,000.

Regarding the allegation that “the companies that Mr. Adjenim Boateng Adjei established allegedly subletted, subcontracted or “sold” contracts awarded them by procurement entities of State without the consent of the said entities”, TDL submitted that no such subletting, subcontracting or selling of contract had occurred and that is the reason why no evidence can be adduced by the Complainant to substantiate its claim. In respect of the call to investigate the officials of TDL and procurement entities for their involvement in corruption in the award of contracts to TDL and the “sale” of those contracts, TDL said that such an allegation of corruption has no basis. It explained that none of its officials has been involved in any corrupt activity for the award of contract and none of its officers has sold any contract awarded the company.

TDL disclosed that it was awarded 6 contracts out of the 15 occasions the company was shortlisted. Certificates of completion on 4 out of the 6 contracts had been issued to TDL which it exhibited as “TDL 1”, “TDL 2”, “TDL 3” and “TDL 4” being contract completion certificates issued by procurement entities to TDL for the completion of the contracts. Two of the contracts, according to TDL, were still under execution.

In respect of the allegation that “by the subletting, subcontracting or “selling” the contracts to other contractors and suppliers, Mr. Adjenim Boateng Adjei enriched himself illegally”, TDL described it as baseless. It went on to explain that *“The allegation could only be considered if the Complainant was able to show that any contract was subletted, subcontracted or sold and for how much. ... the Complainant has failed to show that any contract was subletted, subcontracted or sold and so the issue of whether Mr. Adjenim Boateng Adjei has enriched himself cannot arise unless the Complainant is able to answer the requests...”* to provide evidence.

TDL further argued that even though Mr. Adjenim Boateng Adjei at the inception of the company was both a director and a shareholder of TDL, per a letter dated 5th September, 2017, he resigned from his position as director and notified the Chief Executive Officer of TDL citing reasons of his busy schedule as the CEO of PPA. It continued: *“From the inception of the company up to date, Mr. Adjenim Boateng Adjei has not taken any active part in the running of the affairs of the company and has also not received any financial benefit from the company in any shape or form be it by way of salary, allowance or dividends.”*

On the allegation that TDL, being a company of less than 3 years old could not have won and “sold” contracts without the involvement of some public officers in those institutions whose contracts TDL won and “sold”, the Lawyers argued that it is “the weakest link in the chain of unsubstantiated claims against our client” and that the allegation is an *“...empty and baseless accusation against it”*. TDL reiterated that in all its business dealings it had conducted its affairs in accordance with the laws that regulate its activities and it had not sought to unlawfully influence any government official in its business dealings. The Solicitors further argued that at all material times, their client had acted like any other company in the Republic of Ghana in its pursuit for business and contracts and at no point in time had it sidestepped any requirements in order to win any contracts or gain any undue benefits.

Having responded to the allegations brought against TDL, it turned its attention to the documents presented by the Complainant, stating as follows:

*“It appears that the complainant bases its complaint on a supposed investigative documentary by one Manasseh Azure Awuni which has also been attached to the documents presented with the Complaint. We have watched the entire documentary and we regret to say that no matter how much one stretches the issue one cannot find anything in the said documentary that would support the allegations made. Nowhere in the said documentary can it be inferred that a contract awarded to TDL had been sold*

*to any person. In fact, in the said documentary it could be seen that contract belonging to another company, B-Molie Limited, was the subject matter of discussion between the undercover agent and Mr., Thomas Amoah, the Administrative Manager of TDL. The question therefore is what has a discussion of a contract belonging to B-Mole Ltd got to do with TDL and its officials. TDL and B-Molie Ltd are completely unknown to TDL and so upon what basis can one link B-Molie Ltd. to TDL? ... We say that but for the present issues, the existence of B-Molie Ltd. was completely unknown to officials of TDL".*

*The Solicitors continued "We also note that the said documentary contains portions in which the Administrative Manager of TDL, Mr. Thomas Amoah was seen having discussions with an undercover agent. The discussions centred on prospects of the undercover agent participating in the execution of a contract belonging to B-Molie Ltd. Furthermore, the documentary would also show that Mr. Amoah sought and obtained GH¢15,000 as registration fee and deposit towards any future project. The said officer was queried for his conduct which the company found not to be satisfactory. The query letter and his response have been attached herein as **Exhibit 6** **Exhibit 7** respectively. It would be obvious that Mr. Amoah at all material times was on his own frolic and had no authority to be engaged in the discussions he had.*

*Be that as it may, there is nothing in documentary that suggests that Mr. Amoah was selling contracts awarded to TDL. As it is the normal practice in many businesses, TDL keeps a list of suppliers that are called upon when their services are required. Mr. Amoah acted within his powers when he sought to register the supposed Joseph Kumadrah as a contractor. It would be obvious even from the document attached by the Complainant that the "Contractors Registration Form" (herein attached as **Exhibit 8**) is not a form that has been designed for the purpose of selling contracts by TDL to others. This conclusion is irresistible when one considers the statements found under the heading '**Declaration**' on the last page of the form. The document is*

*clearly seen to be a Suppliers Register. We submit that there is nothing untoward or illegal for TDL to set out and design a form that prospective provider of suppliers or services are needed. To suggest, as was the case in the documentary that merely filling the forms was in preparation for the sale- of non-existent contract is ridiculous because the form itself is clear on its face that it is a Suppliers Register.*

*We also state that even when though Mr. Amoah has admitted that at the time he was speaking to the undercover agent, he was seeking to find partners for the execution of the B- Molie contract, a wholly private pursuit, the mere fact that he engaged in that conversation does not mean that he was selling contracts belonging to TDL. As already stated, B- Molie Ltd has no relationship whatsoever with TDL. In addition, the discussion between Mr. Amoah and the undercover agent with respect to any of TDL's contracts was done without any authority from the Chief Executive Officer of the TDL and clearly above the powers of Mr. Amoah. As already stated, the contracts awarded to TDL has been fully executed at the time of the said conversation and so there cannot be a contract that was purportedly available for sale assuming TDL was even in the business of selling contracts. We submit that there is still no proof that TDL or any of its officials have sold any contract to any person.*

*We take note of the fact that the Complainant also alleges that some contracts have been subletted or subcontracted without the authority of the institutions that awarded those contracts. First of all, subcontracting or subletting are not illegal activities under the laws of Ghana provided same is done in accordance with the laws and terms governing the contracts. In fact, in most standard contracts, provisions are made for subcontracting and subletting subject to certain conditions such as seeking the consent of the employer. We submit that TDL has not subletted or subcontracted any contract to any entity or person. In the circumstances, we demand strict proof from the complainant on the contracts which are subletted or subcontracted without the consent of the employers. We further demand proof of any employer to the*

*effect that a contract it awarded to TDL had been subletted or subcontracted without their consent.*

*Our client takes note of the fact the present complaint is brought pursuant to chapter 24 of the 1992 constitution. Having regard to the totality of the complaint before the Commission, it is obvious that the complaint is cognizable under Article 284 and Article 286. It is furthermore deducible as far as our client is concerned, that it is only affected by the alleged breach of Article 284 of the 1992 constitution in the sense that it is alleged by the Complainant that Mr. Adjenim Boateng Adjei has placed himself in a conflict of interest situation when as the CEO of the PPA, a company in which he had interest, TDL was awarded contracts by the state agencies and so our client would have benefitted from the alleged breach of the said article by Mr. Adjenim Boateng Adjei. Our client shall contend that in all of its business pursuits, Mr. Adjenim Boateng Adjei has never placed himself in any conflict of interest situation that has resulted in our client getting a contract. This conclusion is unavoidable given that Mr. Adjenim Boateng Adjei has no authority in his capacity as CEO of PPA to influence the processes leading to the award of contracts at the various government agencies especially when the restricted tender process is the preferred procurement method. In such instances the Board of the PPA merely considers the application for the use of that method and also check if the shortlisted companies meet the minimum criteria set out in the law. The burden of the Complainant in this regard is show that in some instances TDL did not match the minimum requirement and yet Mr. Adjenim Boateng Adjei failed to disqualify them because of his personal interest.*

*We would further contend that Mr. Adjenim Boateng Adjei never placed his personal interest ahead of his duties as the CEO of PPA. In fact, we have been apprised of an instance when he wrote to a procurement entity to disqualify TDL in a tender process in which TDL had participated but had not presented a responsive offer having regard to the specifications of that particular contract. We attach herein as **Exhibit 9 & Exhibit 10** letters*

*under the hand of Mr. Adjenim Boateng Adjei in his capacity as the CEO of PPA, to the Bank of Ghana in which he questioned the said institution as to why TDL had been shortlisted to proceed to the next stage of a tender process when its offer was not responsive to the minimum specifications stated in the tender documents. This bears testimony to the unassailable integrity of Mr. Adjenim Boateng Adjei and the fact that he would never sidestep the requirements of the law simply because TDL was involved. Mr. Adjenim Boateng Adjei without more, refused to bend the rules in favour of TDL. We call on the Complainant to also provide an instance in which the rules were bent by Mr. Adjenim Boateng in favour of TDL. In the absence of any such instance we submit that the contention that Mr. Adjenim Boateng Adjei was in breach of Article 284 cannot hold and must be dismissed.*

*We shall conclude by referring the Commission to the dictum of Brobbey JSC in the case of **Okudjeto Ablakwa (No 2) & Another v Attorney General & Obetsebi Lamptey (No2) [2012]2 SGCLR 845 thus:***

*“The Plaintiff’s reliefs failed in so far as they were based on cronyism, arbitrariness, capriciousness, discrimination or conflict of interest. I have had the benefit of reading in advance the opinion of my brother Atuguba JSC, the President of this panel. He dismissed the claims of the plaintiffs in respect of conflict of interest, cronyism, discrimination, arbitrariness, capriciousness and corruption. What that implies is that this panel is unanimous in dismissing the claims of the plaintiffs based on, cronyism, discrimination, arbitrariness, capriciousness, corruption and conflict of interest... this is a Court of law, a court of equity and a court of justice. As a court of law, we are governed by rules...our rule and regulations mandate that people who invite the court to condemn others for the wrong doing should be in a position to justify what they call on the courts to do”.*

*We submit that based on the case above, the Commission ought to make a determination of the issues presented by the Complainant having regard to the rules and regulations on procurement practices in*

*Ghana, the specific roles of the Board of PPA, the authority of Mr. Adjenim Boateng Adjei in his capacity as CEO of PPA in the procurement process and also establish in what manner he put himself in a conflict of interest situation in order to favour our client. The present matter shall not admit of conjectures, assumptions and half-baked facts and so the Complainant is put to strict proof of the allegations to which our client has responded. We respectfully submit”.*

### **Thomas Amoah’s Written Response**

On 11<sup>th</sup> November 2019, the Commission requested Thomas Amoah (10<sup>th</sup> Respondent) to provide his comments on the allegations filed by the Complainant against him.

In a letter dated 19<sup>th</sup> November 2019, signed by his Lawyer, Kwaku Owusu-Agyemang Esq. of K-Archy & Company, the 10<sup>th</sup> Respondent submitted his comments to the Commission thus:

1. We refer to your letter dated 11<sup>th</sup> November 2019 on the above subject matter in which your office invited comments from our client in response to certain allegations filed with your office by the Ghana Integrity Initiative (hereafter referred to as the Complainant). In addition to the letter aforementioned, our client was also served with the various documents, including the actual complaint filed with your office, the Commission for Human Rights and Administrative Justice (the Commission), by the Complaint.
2. In the letter above stated, our client was requested to comment on the following allegations made against him:
  - a. *In order to facilitate his companies, win contracts, Mr. Adjenim Boateng Adjei either directly or indirectly disclosed procurement related information to his companies unlawfully and among others enabled a company less than three years old to win high value contracts.*

- b. The companies that Mr. Adjenim Boateng Adjei established allegedly subletted, subcontracted or "sold" contracts awarded them by procurement entities.*
  - c. By the subletting, subcontracting, or "selling" of the contacts to other contractors and suppliers, Mr. Adjenim Boateng Adjei enriched himself illegally.*
  - d. The Complainant believes that TDL, a company less than 3 years old could not have won and "sold" contracts without the involvement of some public officers in those institutions whose contracts TDL won and "sold".*
  - e. The Complainant urges the Commission to investigate the officials of TDL, especially Thomas Amoah as well as those public officers of procurement entities for their involvement in corruption in the award of contracts to TDL and the "sale" of those contracts. In order not to allow these persons benefit from the illegal wealth they may have acquired through corruption, investigations should be conducted, and the illegal wealth retrieved for the State.*
3. Having reviewed your letter aforementioned, the allegations contained in the complaint and the documents attached to same, our client is of the conviction that the said allegations are baseless, have no standing in law and merely a fishing expedition to find fault and illegality with respect to his work as the Administrative Manager of TDL. In answer to the allegations, our client shall take the allegations in the manner outlined above and respond to same seriatim.
4. Allegation that in order to facilitate his companies win contracts, Mr. Adjenim Boateng Adjei either directly disclosed procurement related information to his companies unlawfully and among others, enabled a company less than three years old to win high value contracts, our client contends that there is no basis for this allegation and same is denied. The gravamen of the allegation is that TDL was in receipt of procurement related information given to it by Mr. Adjenim Boateng Adjei in his capacity as the CEO of the Public Procurement Authority

and that the receipt of such information enabled TDL to win high value contracts. Our client shall state that at no point in time has he received any procurement related information from Mr. Adjenim Boateng Adjei to enable TDL win any contract. Moreover, in his capacity as the Administrative Manager, he has not received any procurement related information from TDL in any procurement process. *More so, our client shall state that it is not part of his duties at TDL to tender for contracts and so any such allegation that the company had* receive procurement related information is completely alien to him since even if there was any such allegation that the company had received procurement related information is completely alien to him since even if there was any such instance, which is vehemently denied, he would not be the recipient of such information.

5. Our client also states that the allegation that TDL had won high volume contracts by reason of the supposed disclosure is also without any basis. The allegation does not take count of the contracts won by the TDL and its capacity to execute them, the Complainant has also not pointed out any law that disqualifies TDL from winning the contracts it was awarded. To the best of our client's knowledge, TDL has been awarded 6 contracts by various procurement entities in Ghana. We challenge, the Complainant to point out any contract that TDL was not qualified to win and further to show the nature, manner and disclosure of the alleged procurement related information to TDL that caused it to win those contract(s).
6. We now turn to the allegation that "the companies that Mr. Adjenim Boateng Adjei established allegedly subletted, subcontracted or "sold" contracts awarded them by procurement entities or State without the consent of the said entities". Our client equally refutes this empty allegation in its entirety. In our client's capacity as the Administrative Manager of TDL, he has not come across any contract that was

awarded to TDL that has been “subletted, subcontracted or sold” by TDL without the consent of the awarding entities. As far as our client is aware, all the contracts that have been awarded to TDL have been executed or being executed by TDL and so the contention that TDL has sold, subcontracted or subletted such contracts cannot be substantiated. We attach herein **Exhibit TA 1, Exhibit TA 2, Exhibit TAAA 3 and Exhibit TA 4**, being contact completion certificates issued in the name of TDL for the contracts it has completed. TDL is still executing two of the contracts.

7. Our client shall reiterate that no such sale, subletting or subcontracting has been done by TDL and so the allegation would remain unsubstantiated. The conclusion is unavoidable because by a study of the documents attached to the complaint as well as careful study of the complaint itself; there is nothing to suggest that such an activity has taken place. The Complainant has failed to show any contract between TDL and any other person or entity to whom a contract had been sold, subletted or subcontracted. The Complaint also fails to give the details of any such activity.
8. The next allegation is that *“by the subletting, subcontracting or “selling” of the contacts to other contractors and suppliers, Mr. Adjenim Boateng Adjei enriched himself illegally”*. Given that the allegations of subletting, subcontracting and selling contracts remain unproven, the issue of Mr. Adjenim Boateng Adjei enriching himself because TDL had subletted, subcontracted and sold contracts would not even arise. The Complainant is hereby challenged to provide details of the contract which we subletted, subcontracted or sold and further give the contact prices of such contracts, how much they were sold for and how much of the proceeds of the phantom subletting subcontracting and sale went to Mr. Adjenim Boateng Adjei.
9. In his capacity as the Administrative Manager of TDL or client cannot recollect any instance where the company had paid any money to Mr.

Adjenim Boateng Adjei whether as salary, allowance or dividend. The burden on the Complainant is to establish by how much Mr. Adjenim Boateng Adjei enriched himself due to any such illegal activity as alleged by the Complainant.

10. The next allegation is that the *“complainant believes that TDL, a company less than 3 years old could not have won and “sold” contracts without the involvement of some public officers in those institutions whose contracts TDL won and “sold”*. We surmise that the reason for this allegation is that because TDL is less than 3 years old it was not qualified to win contracts without the involvement of the officers of the institutions that awarded those contracts. First of all, TDL has not sold any contract and so the allegation is denied. Secondly, in his capacity as the Administrative Manager of TDL, our client is unaware of any instance where the company has sought to obtain any favour by corrupting any government official. As far as our client is aware, all the contracts won by TDL were won by following due process and no proof of an attempt to corrupt any public officer has been brought by the Complainant. We demand proof of any such instance and whether our client was involved in any such enterprise.

11. We now turn to the last allegation that is, *“the complainant urges the Commission to investigate the official of TDL, especially Thomas Amoah as well as those public officers of procurement entities for their involvement in corruption in the award of contracts to TDL and the “sale” of those contacts. In order not to allow those persons benefit from the illegal wealth they may have acquired through corruption, investigations should be conducted and the illegal wealth retrieved for the State”*.

12. Our client denies the allegation above. It is our client’s contention that he has not involved himself in any issue of corruption in the award of

contract to TDL. As the Administrative Manager of TDL, it was not part of his duties to facilitate processes leading to the tendering for contracts or entering into contracts. Those are exclusively within the powers of the Chief Executive Officer of the company. As already indicated, there is no evidence of the Chief Executive Officer of the company. As already indicted, there is no evidence of a contract having been sold by TDL. Our client also denies the allegation that he has benefitted from the sale of contracts because as earlier stated, no such activity has taken place. Our client therefore demands full proof of the contracts he has sold and further proof of how much money he had obtained by reason of the alleged sale.

13. We now turn our attention to the documents presented by the Complainant as the basis of its claim that our client has been involved in the sale of contracts and had benefited from the said sale. Our client takes note of the documentary by the journalist, Manasseh Azure Awuni, attached by the Complainant for his attention. We say from the outset that there is nothing in the said documentary that suggests that TDL or our client had sold a contract. It is on the basis of the lack of such proof that we say that the conclusion of the said documentary that contracts had been sold is false, erroneous, disingenuous and actuated by malice.

14. Our client shall say that sometime ago he was contacted by an old acquaintance who informed him that he needed him to secure funding for a contract that had been awarded to a company called B-Molie Ltd. Before this conversation, B-Molie Ltd was completely unknown to our client and the said company does not have any connection whatsoever with TDL. A copy of the contract was sent to our client and he kept same with the view of helping his acquaintance seek funding for the said project. Our client says that not long after the contract was given to him, he received a call from a gentleman who also informed our client that he was interested in funding

contracts if our client had any available. Our client requested for a meeting to discuss the business proposal. It has come to light that the circumstances under which the said contact came to our client and the manner in which our client was approached by the undercover agent were all orchestrated by the proponents of the said investigative documentary and same explains why apart from that abortive attempt, the Complainant has failed to show any actual sale of contract by TDL.

15. At their meeting they discussed ways in which they could do business in relation to the B-Molie Ltd contract given that our client has experience in financial engineering. The undercover agent, as we have come to know, also requested for areas of possible business interest in respect of other contracts. It was at this point that our client informed the undercover agent that he ought to register as a supplier with TDL. A form was given to him and he filled same. We wish to state that at all material times, the discussion between our client and the undercover agent was with respect to the undercover agent being a supplier to TDL. This is clearly found on the form herein attached as **Exhibit TA 5**, the same document also attached by the Complainant. There is nothing on the form that suggests that same was a registration for buyers of contracts from TD and none can be inferred.

16. Our client says that at no point in time in his discussion with the undercover agent did he sell a contract to the said undercover agent whether or not the said contract belonged to TDL. In fact, at the time of said conversation, all contracts awarded to TDL had either been completely executed or were under execution so it cannot be the case that any of such contracts had been sold to anyone. We also stress that our client's duties as an Administrative Manager, does not include binding TDL in any contract and he has never done so before. All such contracts or agreements are executed by the Chief Executive

Officer and to knowledge of our client the Chief Executive Officer of TDL has not entered into any such contract with anyone including the undercover agent.

17. Upon the airing of the documentary, our client's employee issued him with a query to explain certain assertions he had made in the said documentary. The query to our client is attached as **Exhibit TA 6** and his response to same is attached as Exhibit 7. In his response he noted that the money he received from the undercover agent was pursuant to his discussion with undercover agent on the intended finance he was to seek for the execution of the B-Molie contract and had nothing to do with any contract belonging to TDL given that there was no contract belonging to TDL that could for the subject matter of the discussions he had with the undercover agent.

18. We submit that there is no proof that our client had participated in the sale of any contract belong to TDL or that any such sale occurred in the first place. We further maintain that no such sale of contract has been proven by the Complainant. The Complainant's dependence on the documentary by Manasseh Azure Awuni without more does not constitute proof of any wrongdoing on the part of our client. Finally, the Complainant is put to strict proof of the sale, sublet or subcontracting of contracts as allege. Respectfully submitted.

### **Written Comments from PPA Board**

The Board, in a letter ref. no. PPA/CEO/11/2587/19, dated 27th November, 2019 and signed by Professor Douglas Boateng, Chairperson, PPA Board, provides as follows:

"Upon a perusal of the content of your letter together with accompanying documents, the Board of the Public Procurement Authority (PPA Board) makes the following observations and comments:

1. It is noted that the allegations contained in your letter are levelled collectively against the PPA Board. With the exception of Mr. A. B. Adjei, no allegation of conflict of interest, corruption, collusion or inappropriate conduct is made against any specific person serving on the PPA Board.
2. Save paragraph 1 and 7 of the particulars of complaint, the thrust of the complaint refers to specific acts allegedly committed by Mr. A. B. Adjei in the dual capacity of shareholders in certain companies and Chief Executive Officer of the PPA.
3. Paragraphs 1 and 7 of the complaint purport to "rope in" the PPA Board on the basis of a suspicion that "*the conduct of Mr. Adjenim Boateng Adjei could not have occurred without the collusion and inappropriate conduct by the Board of the PPA.*" No particulars of alleged "*collusion and inappropriate conduct by the Board*" were given in either the complaint by Ghana Integrity Initiative or your letter. In the circumstances, we consider the suspicion of "collusion and inappropriate conduct by the Board" as unfounded, speculative and imaginary.
4. It is pertinent to assert, respectfully, that the PPA Board is neither vicariously responsible for acts allegedly committed by Mr. A. B. Adjei, nor vicariously liable for allegations of conflict of interest, corruption or other "inappropriate conduct" levelled against Mr. A. B. Adjei.
5. No member of the PPA Board has engaged in conduct amounting to conflict of interest, abuse of office or corruption.
6. It is necessary to place on record that no member of the PPA Board, with the exception of Mr. A. B. Adjei, is a shareholder in Talent Discovery Limited or indeed, any of the companies

mentioned in the complaint. Neither is any member of the PPA Board a director or officer in any of the companies mentioned in the complaint.

7. It is noted that the complaint annexes copies of some of tender and contract documents in respect of four (4) transactions involving Talent Discovery Limited (3 contracts) and B-Molie Enterprise Limited (1 contract).
8. We observed that none of the tender and contract documents in respect of the 4 transactions annexed to the complaint, emanate from the PPA or show any involvement of the PPA in the award of the contracts in issue. However, since the burden of the documentary by Manasseh Azure Awuni which led to the original complaint against Mr. A.B. Adjei bordered on his role in approvals for restricted tendering, we assume that the 4 transactions in issue in this complaint also emanate from restricted tendering method of procurement.
9. In this regard, we assert that the "liability" of the PPA Board for any conflict of interest, corruption, collusion or other unlawful conduct, must be strictly examined with regard to its statutory functions under the Public Procurement Act, 2003 (Act 663) as amended by the Public Procurement (Amendment) Act, 2016 (Act 914) in the matter of grant of approvals for restricted tendering method of procurement.
10. The PPA does not select companies to apply for or to bid for procurement contracts. Neither does it award procurement contracts. Same are done by procurement entities.
11. Procurement entities under Act 663 are primarily, required to engage in competitive tender proceedings for the selection of suppliers and contractors for goods, works and services. In exceptional case of application for restricted tendering

procedure, procurement entities themselves, in accordance with section 38 and 39, select the suppliers and contractors, and present an application to the PPA Board for a determination as to whether that method of procurement may be adopted.

12. The role of the PPA Board in a process of restricted tendering, therefore, is to determine whether the grounds set out in section 38 of Act 663 for the adoption of restricted tendering method of procurement have been properly canvassed. Restricted tendering is a form of competitive tender.
13. Thus, consequent upon the grant of approval by the Board for such a procedure to be adopted, the procurement entity becomes fully responsible for the conduct of the process of tender, evaluation of bids and selection of the winner in accordance with sections 65. It is submitted that it is for this reason that copies of the 4 tender and contract documents attached to the complaint do not show any role or involvement at all by the PPA. All the steps therein and stated in this paragraph, were actions taken by the procurement entities.
14. Section 39 (2) of Act 663 clearly specifies the role of the PPA after granting approval for a procedure of restricted tendering to be adopted. The procurement entity is only required to publish a notice of the selected tendering award in the PPA Bulletin.
15. In order to dispel any misconception of the mandate of the PPA Board in assessing the qualifications of companies "shortlisted" in applications for restricted tendering, it is important to state that the PPA Board has no legal authority to determine the technical, professional or environmental qualifications in public procurement when assessing applications for restricted tendering method of procurement.

16. Section 22 of Act 663 requires tenderers in public procurement to demonstrate their qualifications. At the point where an application for restricted tendering is considered by the PPA, there is no tender opened and therefore, there would be no tenderer. The duty of tenderers to demonstrate their qualifications obviously does not arise, in terms of the law, when the PPA Board is considering an application under section 38 of Act 663.
17. Checks done of companies "shortlisted" for restricted tendering, including examination of statutory documents of the companies, checks done, are with the view to enhancing value for money in respect of applications for restricted tendering. In addition to the examination of statutory documents of companies, checks done on the authority of the Board essentially relate to price reasonableness. As stated above, in accordance with section 22 of Act 663, the actual evaluation of the technical, professional and environmental qualification of tenderers is required to be done by procurement entities when tenders are opened.
18. The application for restricted tendering in question were duly considered by the Board of the PPA, in exercise of its mandate under section 38 of Act 663. No abuse of power, abuse of office, corruption or conflict of interest was committed by the Board in that process.
19. The grant of an application for restricted tendering only constitutes approval for the entity to commence processes for a tender among the listed companies, in accordance with other provision of the law.
20. Section 39 (3) of Act 663 requires procurement entities, after the grant of approval for restricted tendering, to apply all the provisions in Part Five of Act 663 (on competitive tendering),

with the exception of section 47, in the conduct of restricted tendering, and therefore, procurement entities are fully responsible for the conduct of a process of tender, and therefore, procurement entities are fully responsible for the conduct of a process of tender, evaluation of bids and selection of the winner in accordance with Part Five of Act 663.

21. In conclusion, we submit that the allegation that:

*“the conduct of Mr. Adjenim Boateng Adjei could not have occurred without the collusion and inappropriate conduct by the Board of the PPA”, is conjectural, unsubstantiated and suppositional. That supposition is most unwarranted, unfortunate and has the real tendency to denigrate the reputation of the Chairman and other members of the PPA Board.”*

### **Written Comments of PPA Board Members**

In accordance with article 287(1) of the Constitution, the Commission requested each of the members of the Board of the PPA, in letters dated 6<sup>th</sup> August 2020 and 24<sup>th</sup> September 2020 to confirm or deny specific allegations made against them, and if they denied, to state so expressly.

### **Professor Douglas Boateng**

In a letter dated 9<sup>th</sup> October 2020, Professor Douglas Boateng (2<sup>nd</sup> Respondent) in admitting to the allegation of “non-compliance or contravention of Article 286 (1) of the Constitution and section 1 (1) of Act 550, stated as follows:

*“I refer to your letter dated 6<sup>th</sup> August, 2020 and 24<sup>th</sup> September which I have just received and referenced as CHRAJ/297/2019/296 headed as above, in which you refer to my appointment by His Excellency the President as Chairman of the Board of the Public Procurement Authority (PPA).*

*I have been asked to specifically comment on the allegation of “non-compliance or contravention of **Article 286 (1)** of the Constitution and **section 1 (1) of Act 550...**” by the Complainant.*

*I respectfully respond that I am now in the process of complying with the provisions of **article 286** of the Constitution and section 3 of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) by filing a declaration of assets form with the Auditor-General. The failure to do so earlier was inadvertent and out of mistaken view of the relevant laws that pertains to my purely citizenry supervisory non-executive chairmanship role coupled with the COVID disruption to especially international travel.*

*The requested information shall be submitted on or before close of business on October 14th 2020.”*

### **Hon. Godfred Yeboah Dame**

In a letter dated 17th August, 2020, Mr. Godfred Dame, a Deputy Attorney-General and Minister (3<sup>rd</sup> Respondent), a member of the PPA Governing Board, provided his comments as:

*“... Dear Sir,*

*“RE: ALLEGATIONS OF CONTRAVENTION OR NON-COMPLIANCE WITH CHAPTER 24 OF THE 1992 CONSTITUTION AND THE PUBLIC OFFICE HOLDERS (DECLARATION OF ASSETS AND DISQUALIFICATION) ACT 1998 (ACT 550) BY ADJENIM BOATENG ADJEL, THE BOARD OF THE PUBLIC PROCUREMENT AUTHORITY AND OTHERS”*

*ANSWER OF GODFRED YEBOAH DAME*

*I refer to your letter dated 6<sup>th</sup> August, 2020 referenced as CHRAJ/297/209/296 headed as above, in which you refer to my appointment by H.E. the President as a member of the Board of the Public Procurement Authority.*

*I have been asked to specifically comment on the allegation of “non-compliance or contravention of Article 286 (1) of the Constitution and section 1 (1) of Act 550...by the Complaint...”*

*I say in response that all records relating to my compliance or non-compliance with the provisions of article 286 of the Constitution and the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) are in the custody of the Auditor-General, the public officer assigned by the Constitution to be a keeper of such records.”*

### **Mrs. Ernestina Swatson Eshun**

In a letter dated 18<sup>th</sup> August, 2020, Mrs. Ernestina Swatson Eshun (4<sup>th</sup> Respondent), a Technical Advisor to the Minister of Finance and member of the Board of the PPA, submitted her comments to the Commission. The letter reads:

*“...I refer to your letter dated 6<sup>th</sup> August, 2020 referenced as CHRAJ/297/209/296 headed as above.*

*I have been asked to specifically comment on the allegation of “non-compliance or contravention of Article 286 (1) of the Constitution and section 1 (1) of Act 550...by the complaint...”*

*I respectively respond that a careful examination of article 286 (5) of the Constitution and section 3 of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) will disclose that my appointment as a member of the Board of the Public Procurement Authority (PPA) is not an office to which Act 550 applies.”*

### **Mr. Samuel Richard Nii Baidoo**

Mr. Samuel Richard Nee Baidoo (5<sup>th</sup> Respondent), a member of the PPA Board provided his comments to the Commission in a letter dated 18<sup>th</sup> August 2020. He stated in his letter that:

*“...I refer to your letter dated 6<sup>th</sup> August, 2020 referenced as CHRAJ/297/209/296 headed as above.*

*I have been asked to specifically comment on the allegation of “non-compliance or contravention of Article 286 (1) of the Constitution and section 1 (1) of Act 550...by the complaint...”*

*I respectively respond that a careful examination of article 286 (5) of the Constitution and section 3 of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) will disclose that my appointment as a member of the Board of the Public Procurement Authority (PPA) is not an office to which Act 550 applies.”*

#### **Dr. Emmanuel Yaw Boakye**

Dr. Emmanuel Yaw Boakye (6<sup>th</sup> Respondent), a Technical Director at the Office of the Minister for Procurement and a member of the Governing Board of the PPA, in a letter dated 18<sup>th</sup> August, 2020, states as follows:

*“I refer to your letter dated 6<sup>th</sup> August, 2020 referenced as CHRAJ/297/2019/296 headed as above.*

*I have been asked to specifically comment on the allegation of “non-compliance or contravention of Article 286 (1) of the Constitution and section 1 (1) of Act 550...by the complaint...”*

*I respectfully respond that a careful examination of article 286 (5) of the Constitution and section 3 of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) will disclose that my appointment as a member of the Board of the Public Procurement Authority (PPA) is not an office to which Act 550 applies.”*

#### **Mr. Francis Dave Kofi Owusu**

Mr. Francis Dave Kofi Owusu (7<sup>th</sup> Respondent), member of the Board of the PPA, in a letter dated 5th October, 2020, stated that as follows:

*"I refer to your letter dated 24th September, 2020 referenced as CHRAJ/297/20199/417 headed as above.*

*I have been asked to specifically comment on the allegation of "non-compliance or contravention of Article 286 (1) of the Constitution and section 1 (1) of Act 550...by the Complaint..."*

*I respectfully respond that a careful examination of article 286 (5) of the Constitution and section 3 of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) will disclose that my appointment as a member of the Board of the Public Procurement Authority (PPA) is not an office to which Act 550 applies."*

**Mrs. Stella D. Williams**

Mrs. Stella D. Williams (8<sup>th</sup> Respondent), a Director, Monitoring & Evaluation at the Ministry of Finance, in a letter to the Commission dated 6th October 2020, stated that:

*"This is to acknowledge receipt of your letter dated 24th September 2020 on the above subject matter which I received on Monday, 5th October, 2010.*

*I wish to state that in accordance with the provisions of Article 286 (1) of the 1992 Constitution and Section 1(1) of Act 550, I have duly submitted a written declaration of all my properties, assets and liabilities to the office of the Auditor-General.*

*Attached is a copy of a receipt issued by the Auditor-General to this effect.*

*Please be informed that unfortunately I did not receive your letter dated 6th August, 2020 on the same subject and was therefore not in a position to submit an earlier response."*

Mrs. Stella Willaims attached the following receipt to her letter:

**“GHANA AUDIT SERVICE  
DECLARATION OF ASSET AND LAIBILITY UNDER ARTICLE 286  
OF THE 1992 CONSTITUTION OFFICIAL RECEIPT**

This is to acknowledge receipt of a declaration by:

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DATE; 09TH JAN, 2020 **Receipt No: 10041110**

NAME: STELLA DEDE WILLIAMS

POST/APPOINTMENT: DIRECTOR

ADDRESS: P. O. Box 40, Accra

EMAIL/TELEPHONE NO.: 0202030352

Which has been witnessed by:

NAME: GEOFFREY GARGAR

OCCUPATION: CIVIL SERVANT”

## **MANDATE OF THE COMMISSION**

### **1992 Constitution**

The Commission was established pursuant to article 216 of Chapter 18 of the 1992 Constitution of the Republic of Ghana. Article 218 of the Constitution provides for the functions of the Commission to include the following:

**(a) investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;**

**(b) investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring of**

those services or equal access by all to the recruitment of those services or fair administration in relation to those services...”

**(e) investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations;**

**(f) educate the public as to human rights and freedoms...**

**(g) report annually to Parliament on the performance of its functions”**

The Commission is also mandated to investigate an allegation that a public officer has contravened or has not complied with the Code of Conduct for Public Officers under Chapter 24 (Articles 284-288) of the Constitution.

Chapter 24 of the Constitution provides, amongst others, as follows:

Article 284 Conflict of interest

**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.**

Article 286 Declaration of Assets and Liabilities

**(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 -**

**(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.**

#### Article 287 Complaints of Contravention

**(1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter [Chapter 24] 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 for 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.**

#### Article 288 Interpretation

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

### **Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)**

Section 1 of Act 550 also provides that:

**(1) Pursuant to article 286 of the Constitution, a person who holds a public office mentioned in section 3 shall submit to the Auditor-General a written declaration of**

**(a) the properties or assets owned whether directly or indirectly by that person, and**

**(b) the liabilities owed whether directly or indirectly by that person.**

**(4) In accordance with clause (1) of article 286 of the Constitution, the declaration shall be made by the public officer**

**(a) before taking office**

**(b) at the end of every four years, and**

**(c) at the end of the term of office of that public officer,**

**and shall be submitted not later than six months of the occurrence of any of the events specified in this subsection.**

Section 5 of Act 550 also provides that:

**In accordance with clause (4) of article 286 of the Constitution, the property or the assets required under section 1 to be declared, and which is or are acquired by a public officer after the initial declaration and which is or not reasonably attributable to income, gift, loan, inheritance or any other reasonable source shall be regarded as acquired illegally and in contravention of the Constitution.**

**Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)**

Section 7 of Act 456 restates the functions and powers of the Commission as provided under Articles 218 and Chapter 24 of the Constitution (supra) as follows:

**(1) In accordance with article 218 of the Constitution, the functions of the Commission are:**

**(a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;**

**(b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the**

**State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those services...**

**(e) to investigate an allegation that a public officer has contravened or has not complied with a provision of Chapter Twenty-four (Code of Conduct for Public Officers) of the Constitution**

**(f) to investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations.**

The Commission's mandate in respect of allegations of contravention of Chapter 24 of the Constitution has received judicial pronouncement by the Supreme Court in *Okudzeto Ablakwa (No. 2) & Another v. Attorney-General & Obetsebi-Lamphey (No.2)* [2012] 2 SCGLR 845, that article 287 of the 1992 Constitution makes it mandatory that complaints under Chapter 24 of the 1992 Constitution are to be investigated exclusively by the Commission on Human Rights and Administrative Justice. Brobbey JSC giving the lead opinion of the court held as follows:

*"The issue of conflict of interest raised here can easily be resolved by recourse to the 1992 Constitution. Article 287 mandates that complaints under Chapter 24 of the 1992 Constitution are to be investigated exclusively by the Commission for Human Rights and Administrative Justice...since specific remedy has been provided for investigating complaints of conflict of interest, the plaintiffs were clearly in the wrong forum when they applied to this court to investigate complaints relating to conflict of interest involving those public officers. This was the decision of this court in *Yeboah vs Mensah**

*[1998-1999] SCGLR 492 which endorsed similar decision of the court in Edusei vs Attorney General [1998-1999] SCGLR 753”.*

In the same case, Atuguba (JSC) also stated:

*“It is settled law that where a special remedy has been provided for a matter, only that remedy must be resorted to unless there is anything to the contrary, see Ghana Bar Association vs Attorney General and Justice Abban [2003-2004] SCGLR 250, Yeboah vs J.H Mensah [1998-1999] SCGLR 492.*

In terms of article 218 (e) of the Constitution and section 7(1) (f) of Act 456, the Commission has power to investigate private persons for corruption under certain circumstances. The Supreme Court in *Commission on Human Rights and Administrative Justice v. Attorney-General and Baba Kamara [2011] SCGLR 746*, held, per Sophia A.B. Akuffo, JSC (as she then was) that:

*“If in the course of investigating an instance of alleged or suspected corruption by public officials, a member of the private sector (natural or corporate) becomes enmeshed in the matter, CHRAJ will be duty bound to extend the scope of its investigation to cover the activities of such person, in order to plumb the full and true depth of the instance of “alleged or suspected corruption ... by officials”. It would be derogating from the duty imposed on it by article 218(e) to draw any such artificial lines and boundaries as have been contended by the 2nd Defendant”*

On the procedure for invoking the investigative machinery of the Commission under Chapter 24 of the Constitution, it has been held in *Republic v High Court (Fast Track Division) Ex parte, Commission on Human Rights and Administrative Justice (Interested Party, Richard Anane [2007-8] SCGLR 213* (the Anane Case), that there must be an *“identifiable complainant, be he an individual or body of persons or even bodies corporate before the Commission. The identifiable complainant, who need not be the victim, must file a complaint, which might be in writing or even if it was given*

*orally to a representative in the region or the district, such representative should reduce it into writing and sign it and the complainant should also sign or thumbprint it”.*

As already indicated, the complaint was submitted by the Ghana Integrity Initiative, an identifiable complainant, to the Commission for investigations. The complaint was duly signed. The complaint identified the Respondents who are either public officers or private persons. The complaint alleged contravention and non-compliance with Chapter 24 of the 1992 Constitution, and the Public Office Holders (Declaration of Assets and Disqualification) Act 1998, (Act 550), abuse of office, illicit enrichment and corruption. Therefore, the Commission is satisfied that its mandate has been properly triggered.

## **APPLICABLE LEGAL AND POLICY FRAMEWORK**

The Commission was guided in its investigation by the 1992 Constitution, as well as other legal, regulatory and policy framework relating to the conduct of public officers and persons who have been entrusted with the functions of State, as well as others dealing with the subject matter of the investigation. The relevant provisions of the Constitution and the applicable legislation and policy framework are provided below.

### **The 1992 Constitution**

The Preamble to the Constitution, inter alia, solemnly declares and affirms Ghana’s commitment to freedom, justice, probity, and accountability and the rule of law.

Article 35(8) of the Constitution provides:

**The State shall take steps to eradicate corrupt practices and abuse of power.**

Article 219(1) provides:

**The powers of the Commission shall be defined by Act of parliament and shall include the power –**

- (a) to issue subpoenas requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;**
- (b) to cause any person contemptuous of any such subpoena to be prosecuted before a competent court;**
- (c) to question any person in respect of any subject matter under investigation before the Commission;**
- (d) to require any person to disclose truthfully and frankly any information within his knowledge relevant to any investigation by the Commissioner.**

Article 295 on Interpretation:

**(1) In this Constitution, unless the context otherwise requires, public office includes an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of the moneys provided by Parliament.”**

**Companies Act, 1963 (Act 179) 2019**

Section 180 – Number of Directors

**(1) A company incorporated after the commencement of this Act shall have at least two directors.**

**(3) If at any time the number of directors is less than two in a breach of subsection (1) or subsection (2), and the company continues to carry on business for more than four weeks after that time, the company and every director and member of the company who is in default is liable to a fine not exceeding [twenty-five penalty units]**

for every day during which it so carries on business after the expiration of four weeks without having at least two directors.

(4) Every director and every member of the company who is cognizant of the fact that it is carrying on business with fewer than two directors are jointly and severally liable for the debts and liabilities of the company incurred during that time.

(5) Subject to this section, the number of directors shall be fixed by, or in accordance with, the company's Regulations. Page 30 of 188

#### Section 197- Registration of particulars of directors and secretaries

(2) A company incorporated after the commencement of this Act shall include the particulars specified in the register in the statement required to be sent to the Registrar in accordance with section 27.

(3) A company shall, within twenty-eight days of a change occurring among its directors or in its secretary or in any of the particulars contained in the register, other than those required under paragraph (e) of subsection (2) of section 196 send to the Registrar for registration notification in the prescribed form of the change, specifying the date of the change.

(4) Where a company defaults in complying with subsection (1) or (3), the company and every officer of the company who is in default is liable to a fine not exceeding (twenty-five penalty units) for every day during which the default continues.

(5) A director or secretary who resigns from office shall be deemed to be in default unless notification of the resignation is duly given to the Registrar in accordance with subsection (3) of this section.

Similar provisions are found in Sections 171 and 216 of the new Companies Act, 2019 (Act 992).

**Public Procurement Act, 2003 (Act 663) (as Amended)**

The Public Procurement Act, 2003 (Act 663) (as Amended by Act 914) which is the principal legislation that regulates the operations of the PPA provides in the following sections as follows:

Section 2 on Object of the Board

**The object of the Authority is to harmonize the processes of public procurement in the public service to secure a judicious, economic and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory environmentally and socially sustainable manner.**

Section 3 on Functions of the Board

**In furtherance of its object the functions of the Authority shall include:**

- (d) monitor and supervise public procurement and ensure compliance with statutory requirements;**
- (e) have the right to obtain information concerning public procurement from contracting authorities;**
- (i) advise Government including Metropolitan, Municipal and District Assemblies on issues relating to public procurement;**
- (o) maintain a register of procurement entities and members of and secretaries to tender committees of public procurement entities;**
- (p) maintain a data base of suppliers, contractors and consultants and a record of prices to assist in the work of procurement entities.**

Section 6 of Act 663 "Meetings of the Board" provides:

**(1) The Board shall meet at least once every three months for the dispatch of business at the times and places determined by the chairperson.**

**(2) The chairperson shall preside at meetings of the Board and in the absence of the chairperson the vice-chairperson shall preside and in the absence of both, the members shall elect one of their number to preside.**

**(3) The quorum for a meeting of the Board is five including the chief executive officer.**

**(4) The Board may co-opt a person to act as adviser at a meeting of the Board but a co-opted person does not have the right to vote on a matter before the Board for decision.**

**(5) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.**

**(6) Except as otherwise expressly provided, the Board shall determine the procedure for its meetings.**

#### Section 7 on Committees of the Board

**The Board may for the performance of its functions appoint committees of the Board comprising members of the Board or non-members or both and may assign to a committee a function of the Board as determined by the Board, but a committee composed entirely of non-members may only advise the Board.**

#### Section 8. Secretariat of the Authority

**(1) The Authority shall have a secretariat with the divisions and structures determined by the Board as may be necessary for the effective execution of its functions.**

**(2) The Authority shall have an officer to be designated the secretary who shall perform the function of keeping accurate records of proceedings and decisions of the Board and any other functions directed by the chief executive officer.**

**(3) The Authority may engage consultants and advisers who it may require for the proper and efficient performance of the functions of the secretariat.**

#### Section 9. Chief Executive of the Authority

**(1) The chief executive officer of the Authority shall be appointed by the President in accordance with article 195 of the Constitution.**

**(2) The chief executive officer shall hold office on the terms and conditions specified in the letter of appointment to office.**

**(3) Subject to the general directions that the Board may give, the chief executive officer is responsible for the day-to-day administration of the secretariat of the Authority and the implementation of the decisions of the Board.**

**(4) The chief executive officer may delegate a function of the office of the chief executive officer to an officer of the secretariat but is not relieved of the ultimate responsibility for the performance of the delegated function.**

#### Section 92. Offences relating to procurement

**(1) A person who contravenes a provision of this Act commits an offence and where a penalty is not provided for the offence, that person is liable on summary conviction to a fine not exceeding two thousand five hundred penalty units or a term of imprisonment not exceeding five years or to both the fine and the imprisonment.**

**(2) The following also constitute offences under this Act:**

**(a) directly or indirectly influencing in any manner or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract; and**

**(d) request for clarification in a manner not permitted under this Act**

**(3) Despite anything to the contrary in an enactment, a person who contravenes a Regulation made under this Act is liable on summary conviction to a fine of not more than two thousand five hundred penalty units or a term of imprisonment not more than five years or to both.**

#### Section 93. Corrupt practices

**(1) Entities and participants in a procurement process shall, in undertaking procurement activities, abide by the provisions of article 284 of the Constitution.**

**(2) An act amounts to a corrupt practice if so construed within the meaning of corruption as defined in the Criminal Offences Act, 1960 (Act 29).**

#### **Code of Conduct for Public Officers of Ghana and Guidelines on Conflict of Interest**

The Code of Conduct for Public Officers of Ghana (the Code) contains minimum standards of conduct for public officers as provided for in Chapter 24 of the Constitution. The Code seeks to promote integrity, probity and accountability, dedicated and faithful service to the Republic of Ghana.

The minimum standards of conduct in the Code provide, among others, that public officers shall not put themselves in a conflict of interest situation. To assist public officers, identify, manage and resolve conflicts of interests, guidelines were also issued, titled “Guidelines on Conflict of Interest to Assist Public Officials Identify, Manage and Resolve Conflicts of Interest” (the Guidelines).

Both the Code and the Guidelines were issued as administrative and operational framework/guidelines for implementing the intendment of Chapter 24 of the Constitution.

The Guidelines provide in the following clauses as follows:

Rule 3.1- Conflicting Financial Interests:

A public official shall not participate in an official capacity in any particular matter which to his knowledge:

- i. he/she has a financial interest; and
- ii. any person whose interests are imputed to him in any way has a financial interest if the particular matter will have a direct effect on that interest.

Rule 3.2 - Self-dealing:

A public official shall not take an action in an official capacity which involves dealing with himself/herself in a private capacity and which confers a benefit on himself/herself.

Rule 3.5.1. - Use of Public Office for Private Benefit

A public official shall not use his public office for his/her own private benefit, for the endorsement of any product, service or enterprise, or for the private benefit of friends, relatives, or persons with whom the public official is affiliated in a private capacity, including political parties, non-profit organizations of which he/she is an officer or member, and persons with whom the public official has to seek employment or business relations.

Rule 3.5.3. Use of Non-Public or Confidential Information

Public officials owe it a duty to respect and protect non-public or confidential information to which they have access in the course of their official duties. As such, public officials should not disclose to

others, or use to further their personal interest, such information acquired by them in the course of their official duties.

#### Rule 4.0 - Dealing with conflict-of-interest situations

As soon as conflict of interest situation is foreseeable, the public official must take all appropriate steps to extricate himself/herself from the situation. Such steps may include:

- i. reporting the conflict-of-interest situation and its circumstances to his/her superior officer, or
- ii. removing himself/herself from the conflict-of-interest situation.

#### **REFERRAL**

It is on record that the Office of the Special Prosecutor (OSP) has commenced investigations into the allegations of corruption, sale of contracts and other related offences in relation to Adjenim Boateng Adjei and companies affiliated to him. [Please refer to the case of the Office of the President (OOP) and Adjenim Boateng Adjei].

As a policy, two State Institutions should not independently investigate the same matter at the same time unless it is a joint investigation. As a result, the Commission has considered it appropriate, in line with best practice, to refer the aspect of the allegations on corruption and sale of contracts in the instant case to the OSP. The Commission has also considered it appropriate to refer the section of the allegations dealing with private persons to the OSP as that office is already dealing with such matters in the OOP Case referred to above. The referral is made in accordance with section 27(6) of the OSP Act, 2017 (Act 959), which provides:

**A public agency may refer a matter in relation to corruption or a corruption related offence to the office.**

The Commission shall cooperate with the OSP in the investigation of the corruption related offences and the allegations relating to private persons in accordance with Section 73 (1) of the OSP Act which provides:

**The office may conduct investigations in cooperation with other public institutions.**

## **KEY ISSUES FOR THE INVESTIGATION**

The following were identified as the key issues for determination:

1. Whether Adjenim Boateng Adjei and the other Board Members put themselves in positions where their personal interests conflicted or were likely to conflict with the performance of their official functions.
2. Whether Adjenim Boateng Adjei abused or used his office improperly as CEO of PPA for personal gain or for the benefit of TDL and other companies affiliated to him.
3. Whether the PPA Board colluded with Mr. Adjei in the above.
4. Whether the CEO, the Chair and other Members of the Board of the PPA declared their assets and liabilities in accordance with Article 286 of the Constitution.
5. Whether Mr. Adjei acquired property or assets between the periods April 2017 and October 2019 when he was holding public office which were not reasonably attributable to income, gift, loan, inheritance or any other reasonable source.

## **THE INVESTIGATION**

In the course of the investigations, the Commission reviewed the comments of the Respondents and documents, and interviewed the Respondents and other persons who had information helpful to the investigation, among others. This was done pursuant to Article 219 (1) (c) and (d) of the 1992

Constitution on the Special Powers of Investigation of the Commission which provides:

**(1) The powers of the Commission shall be defined by Act of Parliament and shall include the power –**

**(c) to question any person in respect of any subject matter under investigation before the Commission;**

**(d) to require any person to disclose truthfully and frankly any information within his knowledge relevant to any investigation by the Commissioner.**

The Commission on Human Rights and Administrative Justice Act, 1993 (Act 456) also provides under Sections 8 and 15 as follows:

Section 8 on Special Powers of Investigation:

**(1)By virtue of Article 219 of the Constitution, the Commission may, for the purposes of performing its functions under this Act,**

**(c) question a person in respect of a subject matter under investigation before the Commission;**

**(d) require a person to disclose truthfully and frankly an information within the knowledge of that person relevant to an investigation by the Commission.**

Section 15 on Evidence at Investigations:

**(1) Subject to this Section the Commission may require a person who is able to give an information relating to a matter being investigated by the Commission**

**(a) to furnish the information to it, or**

**(b) to produce a document, paper or thing that relates to the matter being investigated and which may be in the possession or control of that person.**

**(2) The Commission may summon before it and examine on oath or affirmation**

**(a) a person required to give information or produce anything under subsection (1),**

**(b) a complainant, or**

**(c) any other person who the Commission considers will be able to give information required under subsection (1).**

In line with the above provisions, the Commission obtained about 100 official documents from public institutions and other sources, including:

- i. Registrar-General's Department;
- ii. Financial Intelligence Centre;
- iii. Ministry of Works and Housing;
- iv. Hydrological Services Department;
- v. Public Procurement Authority;
- vi. Ghana Ports and Harbours Authority;
- vii. Bank of Ghana;
- viii. Ghana Cocoa Board;
- ix. Ministry of Education;
- x. Ministry of Inner Cities and Zongo Development;
- xi. Ministry of Special Development Initiatives;
- xii. Ghana Water Company Limited, and
- xiii. Auditor-General.

## **SUMMARY OF EVIDENCE**

### **Interview of Persons**

#### **Adjenim Boateng Adjei**

On, 16<sup>th</sup> June, 2020 and 26<sup>th</sup> January, 2021, the Commission met with Mr. Adjei and his solicitor, Mr. Kwaku Owusu-Agyemang, ESQ.

At the interviews with the Commission, Mr. Adjei admitted that he incorporated Talent Discovery Limited (TDL) together with his brother-in-law, Francis Kwaku Arhin. He said he was one of the shareholders and a Director of TDL. He indicated that he has a 50% shareholding, but noted that during the registration an error occurred and the records reflected that he was the majority shareholder with 60% of the shares. He said,

*“So when that decision was made, I said you can have it, 50:50 ...that is what we agree on. Little did I know that there was an error at Registrar-General and they have changed it to 60:40. I have never seen the documents of registration myself. But what I agreed with him to go and register was 50:50. Mr. Adjei said he doubled as the Chairman of TDL, but on 5th September 2017 he resigned as a Director and Chairman of the company. But this has not reflected in the records at the Registrar-General’s Department”.*

On the “genesis” of the incorporation of TDL, Mr. Adjei said:

*“... this is a brother-in-law who decides to relocate from London to Ghana. So, when he came because we have been communicating over years because of the relationship we have, and I knew him that he was a contractor in the UK. So, he came and said he wants to settle down. So, can we do something together and I said why not. But let me put it this way, we would put the company together, but you would run it.*

*At the time of establishing this company, I was about to turn to the year **fifty-nine (59)**. So, I said, you could have this company, we can have it together, but you run it, so when I leave public office, then I can come fully and join you. So, with that understanding, that company was established...”*

He continued:

*“This company was registered in June, 2017 that was about three months after I have taken office and then just about two three months later before the company would even put itself together to start any business, I threw in my resignation as a director on 5th September, 2017 and said I cannot be part of*

*the running of this company and as I told him from the onset. I told him to keep on running it and when all is said and done and I came out from public service I will join you and we would continue from wherever we got to."*

He mentioned that other companies he incorporated later were limited liability companies and not subsidiaries. Although the signage of TDL describes it as a "Group", the 1<sup>st</sup> Respondent indicated that the signage was a misplacement and that there was no company called TDL Group Limited. He mentioned that TDL Transport and Logistics, TDL Freight Forwarding, and TDL Agro and Chemical Industries are some of the limited liability companies, and that anything TDL was between him and Francis Arhin. Besides that, he established Frosty Ice Mineral Water Ltd with his wife.

On the contracts executed by TDL, he said he contacted TDL and was furnished with the said information on contracts awarded and executed by TDL per the attachments to the comments.

On his connection with TDL Transport and Logistics, TDL Freight Forwarding, TDL Agro Industry, Frosty Ice Mineral Water Ltd, and ABM Logistics, Mr. Adjei said that everything about TDL is between himself and Francis Arhin. He said that Frosty Ice Mineral Water is a company he incorporated with his spouse, Mrs. Mercy Adjei. ABM Logistics was established in 2007 between himself and the spouse.

Regarding the allegation that companies he established including TDL win government contracts and sublet, or sell them, without the consent of the procurement entities that awarded them, Mr. Adjei said that it could not be true. According to him, when he took over office the Board as well as the various committees were dissolved. Meanwhile, various entities continued to submit application for consideration and approval to award contracts. However, the mandate to give approval is vested in the PPA Board and not the CEO. As a result, he wrote to the Ministry of Finance (MoF) to give him a Power of Attorney to carry on business pending the reconstitution of the Board. He said after the approval was given, he set up a Management Team

to consider the numerous applications for a later ratification by the Board of PPA, which according to him, was put in place in September 2017.

Mr. Adjei stated that on 31st January 2018, he saw the first request from an Entity with TDL listed. He said he duly declared his interest in TDL to the Board and accordingly recused himself. He said that the Board commended him and said any time something like that happens, he should declare. He stressed that it could, therefore, not be true that TDL was set up by him ostensibly to win government contracts and sell them.

Mr. Adjei denied being a director in any other company apart from TDL and those companies he mentioned earlier. However, when names of companies he listed while registering TDL in 2017 were read out to him, he finally admitted having directorship in them.

Mr. Adjei mentioned that he used to work with one of the subsidiaries of Zoomlion which bought shares in Aqua Safari Resort where he was made a Director. He said that in his lifetime he had registered many companies and admitted being a Director in the following companies, some of which he said were not operating: Beachfront Stevedoring Co. Ltd.; Best Brain Gh. Ltd.; Bestman Offshore Ghana; Diligent Cover Ltd; Holidays Hills Resort Ltd; Runway View Association (Resident Association of where he lives); Springfield Resource Development; Talent Movers Ghana Ltd.; and AAC Financial Services Ltd.

Mr. Adjei further stated that he used to receive Director's fees at Aqua Safari Resort but because he had not attended meetings for the last 4 or 5 years, he has not received any fees from the company for a while. He said, however, that he was receiving payments from Beachfront Stevedoring Company Ltd.

With regards to approval of applications that come before the PPA Board, Mr. Adjei explained that the Board has several Committees including the Board Technical Committee (BTC), a five-member Committee that sits and

considers applications for restricted tender or single source procurement, although in practice other members could attend the BTC meetings.

Mr. Adjei said that the BTC Report must be approved by the Board. He further explained that the approval from the Board is generally a conditional approval. Thus, where the Board gave approval and requested an entity to provide further information, upon the receipt of the said information, it did not go to the Board again for consideration.

On why the DDU passed TDL, when its minimum number of directors fell short of the minimum number of two, after he (Mr. Adjei) had resigned as director of TDL, he said that he communicated the decision of his resignation to TDL, but was not in the position to know if the said changes had been effected and his directorship replaced. He could not also indicate who the signatories for the returns filed by TDL are. He stressed that he had resigned per his letter to the TDL.

The Commission requested Mr. Adjei to provide it with a soft copy of his letter of resignation as Director and Chairman of TDL. He said a soft copy of the required letter was not available. Besides, he said the issue is a private one.

An examination of Mr. Adjei's accounts at Stanbic Bank, Airport City Branch, some of which he opened the month after his appointment as the CEO of PPA in March 2017, showed that a number of large deposits were made by Faustina Mildred and Christabel. Asked who Faustina and Christabel were, Mr. Adjei indicated that Faustina Mildred and Christabel were his Relations Officers at Stanbic. Asked about the cash payments by Faustina Mildred and Christabel, he said that he often carried the cash to them to make the deposits.

On the payment of GHC43,000 on two occasions (GHC86,000 in total) in November 2017 by Device Ltd, the company that supplied the PPA one 4x4 station wagon (V8), into his UMB Cedi Account, details of which the

Commission obtained from the FIC in January 2021, Mr. Adjei explained that he bought a Range Rover in 2015 and wanted a “higher model”. He therefore entered into agreement with Device Ltd, car dealers, and paid Device Ltd an amount of GHC90,000. At a point, he rescinded his decision and requested for a refund. Device Ltd made the refund in two tranches of GHC43, 000 each. Thus, he lost GHC4, 000 from the transaction. He told the Commission that Device Ltd, which is located on the Spintex Road, can be contacted to confirm what he had told the Commission.

Regarding transfers from his UMB Cedi Account to TDL, Mr. Adjei said that though he resigned as director, he is still a shareholder of TDL. He was called upon at certain times to pay for the unpaid shareholdings.

On the question whether he received salary as CEO of the PPA during his tenure of Office, the 1<sup>st</sup> Respondent said that he never received any salary. He explained that the hazards that go with the office of CEO of PPA were not commensurate with the GHS 6,600.00 monthly salary approved for him by the Fair Wages and Salaries Commission, therefore he protested. He said that he was earning around GHS4, 800.00 in his previous position as CEO of PPA [in 2002-2008]. He said his predecessor was provided monthly salary of GHS14, 000. 00. Mr. Adjei further mentioned that some of his colleague CEOs of public institutions took around GHS99, 000.00 per month. He therefore requested for a review of his remuneration which was pending until he was removed from office.

He also indicated that apart from his own salary, which was woefully inadequate, he noticed on assumption of office that the salary structure of staff of PPA, particularly directors who had worked for over 14 years, was less than GHS5,000.00. For that, he also protested, and wrote several times to the Minister of Finance on the need to enhance salaries of staff of the PPA in order to prevent the high staff attrition rate and attract professionals to work with the PPA.

He added that he petitioned H.E. the President for the payment of a salary of GHS45,000.00 as basic, which the Board agreed to, but was not implemented.

On how he managed the two and half years he was CEO until he was removed without receiving his monthly salary, Mr. Adjei said:

*“...You see, I tell people that some of us, we were not beginners and we were never beginners. I started my adult public life at the age of 22, sorry 25 when I took up a job as a lecturer expatriate. 25 years I was lecturing in a polytechnic in Nigeria. So I am not somebody who was just there and the appointment came...*

*I told the people I drove to PPA when I was given the appointment in my brand-new Range over. I was somebody who was just there sitting to wait for an appointment to start life. And this is something that pains me so much because over thirty (38) years of my life, this was only three years. And what I was more hurt when my accounts was published and people didn't seek to know the background was that over the years I had acquired assets, I have investments, so if I come to office and I am facing this challenge, like this salary and I decide to you know to recapitalise my assets, you know I have land that value three (3) million dollars and all that which I have acquired 14, 15 years ago. So if I decided to do that and I get revenue coming in bits and I re-invest them so could I get other monies. This is not out of place, but because I didn't have the opportunity to give more detailed account of what my accounts look like, look at the way the public would see. In the nutshell, chairman what I am trying to say is that I did not start my life with PPA in this last three years”.*

Concerning allowance of the PPA Board, the Mr. Adjei disclosed that during his tenure, the members of the Board were paid sitting allowances but he could not remember the amounts paid. However, he was sure that the allowance was not extraordinary as they were always guided by the two representatives from the Ministry of Finance on the PPA Board.

## **Francis Arhin**

In an interview at the Commission on 12/06/2020, Mr. Francis Arhin (9<sup>th</sup> Respondent), Chief Executive Officer (CEO) of Talent Discovery Limited (TDL), in the company of his Lawyer, Kwaku Owusu Agyemang Esq of K-Archy & Company, mentioned that TDL was incorporated in June, 2017 as a private limited liability company, with himself as shareholder, Director and Secretary, while Adjenim Boateng Adjei (1<sup>st</sup> Respondent) is Director and shareholder. Mr. Arhin disclosed that subsequently Adjenim Boateng Adjei gave the company “a documented intent to step down as co-Director and Chairman”, although records at the Registrar-General’s Department remain the same.

According to Arhin, he had experience in facility management having worked in the UK from 2002 to 2017 in facility management. He then decided to replicate same in the country. As a result, he decided to incorporate TDL ostensibly to facilitate private and public facilities and property management in the country.

He stated that he was the brain behind the incorporation of TDL and personally went to register it at the Registrar-General’s Department. Mr. Arhin, therefore, dismissed as false, the allegation that the 1<sup>st</sup> Respondent incorporated TDL after assuming office at the PPA.

Furthermore, Mr. Arhin stated that the shares allotted and issued to the 1<sup>st</sup> Respondent were not based on merit, but an appreciation of the support he had and would derive from the 1<sup>st</sup> Respondent. He said that on record, the 1<sup>st</sup> Respondent is still a director and shareholder, but at the company level, he has since resigned as director but remains a shareholder.

Mr. Arhin said that at the time of incorporating the Company, one Kwame Appau was doing all the administrative and secretarial duties but he had since left the company.

According to Mr. Arhin, TDL Group does not exist as a company and that it was only used as an abbreviation for its website. He again said the inscription of “TDL Group Ltd” on the company’s signage was, thus, a mistake.

On the subsidiaries of TDL, Mr. Arhin listed the following, among others, as the subsidiaries of TDL:

- TDL Freight Forwarding.
- TDL Transport and Logistics
- TDL Agro Business

He indicated that TDL Freight and Forwarding was an anomaly which occurred on one of its invoices to the Ghana Water Company by its staff. The correct rendition is TDL Freight Forwarding.

On employees of TDL, Mr. Arhin said that the company had four (4) employees engaged on temporary basis, namely:

- Francis K. Arhin, CEO;
- Thomas Amoah (aka Thomas Clifford Amoah), Administrative Manager;
- Abigail Darfur, Office Secretary; and
- Ebenezer Nyarko, Security

He further said that there were instances where the company had to source consultants in areas of specialty such as accountants. For instance, he mentioned an accountant for such purpose as one Victor, but indicated he was “on and off”, engaged on temporary basis, but could not readily provide their names. He promised to furnish the Commission with a list of such Consultants, but he did not.

He said that the company sometimes received persons for either internship or National Service and such persons may have included, Faustina Mildred

and Adu Kwame Okyere, in response to the question whether he knew those persons.

Regarding the number of employees stated on the SSNIT Clearance Certificate presented to procurement entities as two (2) by TDL, he stated that though they were temporary employees, he was advised to present them on the SSNIT certificate since they had been engaged beyond six (6) months.

Mr. Arhin averred that all decisions with regard to the company are taken by him although there is a Board for TDL, comprising:

- Francis Kwaku Arhin, CEO;
- James O. Arhin, his senior brother, and
- Abraham, a cousin domiciled in the UK

Mr. Arhin was emphatic that Adjenim Boateng Adjei was not a Member of the Board of TDL and he was also not related to the latter. He said he is only married to a cousin of Adjenim Boateng Adjei.

### **Mrs. Ernestina Swatson Eshun**

Mrs. Eshun is a Member of the PPA Board and the Chair of the Board Technical Committee (BTC) of the PPA Board. She is a Technical Advisor to the Minister for Finance. She attended the interview at the Commission on 20th October, 2020. She was accompanied by Mrs. Lesley Doodo, Director/Legal (PPA) and Secretary to the PPA Board, and Mr. Samuel Nee Baidoo, Vice Chair, PPA Board.

Mrs. Eshun mentioned BTC deals with applications by procurement entities for Restricted Tendering (RT) and or Single Sourcing (SS) procurement and described the procedure for considering RT/SS. First, the applications emanate from the procurement entities, which want to undertake RT/SS; it is required that they seek approval from the PPA before they could do that. So, the entity would write to the PPA requesting for approval to undertake

either RT or SS procurement. The said application would be received by the PPA, which is first looked at by the CEO who then asks the DDU to consider the application. The DDU looks at the application in its entirety and the reasons or justification why the RT or SS is being made in the first place. The DDU would also consider the estimated price for the said procurement and compare it with Benchmark Prices and the Value for Money (VFM) for the procurement. The DDU further considers the qualifications of the proposed companies for the tender.

If there is nothing that would disqualify those companies from participating in the tender and the price is reasonable, then the BTC makes a determination as to whether the application should be approved or rejected or request for additional information and then makes recommendation to the Board for consideration, which becomes the basis of the BTC deliberation. After deliberations, the BTC may decide to approve as recommended by the DDU, or ask questions for clarifications, or reject the recommendations of the DDU. The decision of the Board is then conveyed to the entity by the CEO.

On the composition of the BTC, Mrs. Eshun said that it is the full membership of the Board, thus all nine (9) members of the Board. She further explained that the decision of the BTC is considered as the decision of the whole Board.

On whether the DDU report is the same as the BTC report, Mrs. Eshun said that it is the DDU report that the Board considers in its deliberations and may disagree with the recommendation of the DDU and make its own recommendation, which is final and binding on the PPA.

On who engages Entities for clarifications, she said it depends on the information required and where the Board is of the view that the entity supplies further information, the CEO writes to the entity and the response comes back to the Board. However, where the entity fails to include, for

instance, certificate to commence business of a company, the CEO is required to request for it and that does not come back to the Board for deliberation.

In response to a request by the Board of the PPA that certain companies be dropped for having the same owners, Mrs. Eshun said that at the time of application to the PPA for approval, no collusion had occurred and so the Board required the entity to pick one and replace the other and necessarily to drop the affected companies. She stressed that the crime is in the collusion and usually at the time of the request the companies had not been invited to submit tender for the contract.

Mrs. Eshun further stressed that RT/SS must be approved by the Board as it must be justified why the entity could not use competitive tendering. She added that normally the entity would include justification for the application and that where it is indicated "Nil" in the tabular report of the DDU, it meant that it had been dealt with by the Board in a previous meeting.

On what precludes a company from participating in a tender, Mrs. Eshun used the construction of a major highway as an example. She said that where the contract is for a major highway and the classification of the company submitted for participation in the tender is very low, that company would definitely be disqualified for lack of capacity. She indicated that since the classification of companies is done by a competent institution, one cannot doubt its value.

On the request of quantities from procurement entities as happened in the case of the GPHA, Mrs. Eshun said the DDU could, but usually the bill of quantities accompanies the request of the entities to the PPA.

On disclosure of interest, Mrs. Eshun reiterated that the CEO at a Board meeting disclosed his interest in a company and that she was part of that

meeting and the Board took a decision on it. She explained that normally the CEO has to be in all the Board meetings to present or give narrations of the applications and thereafter recuse himself from any deliberation involving his company. She admitted that apart from the said meeting in which the CEO declared his interest and same captured in the minutes, one would not see on the face of subsequent minutes any recusals of the CEO from the deliberation of the Board. She said that the detailed deliberation on an application is not recorded, but only the decisions of the Board are recorded.

She explained further that any recusal is only for deliberation on the application involving companies in which the CEO or other members have interest, and not for the entire meeting of the Board. She explained that at a meeting, the Board sometimes considers over seventy (70) applications and the deliberation is done for each application and for that matter the recusal is only for those the CEO or any member of the Board has an interest in a company. The CEO would give a narration of the applications, including applications involving his company before recusing himself from the deliberation of the said application.

On the processes applications go through at the PPA, Mrs. Eshun said they are received at the Registry, and same forwarded to the CEO for consideration, who minutes on them to the Chair of the DDU. According to her, although sometimes applications include companies in which the CEO has interest, but at that point no recusal is made as no deliberation was to take place. She confirmed that the DDU works directly under the CEO and that after the report of the DDU is submitted to the CEO, he then submits same to the BTC and or the Board for consideration and approval or otherwise. She said that the DDU performs a useful function and that the creation of the DDU was commendable.

**Carl Lokko**

Mr. Lokko is Director, Research, Policy and Planning at the PPA. He is also the Chair of the Due Diligence Unit (DDU). He was accompanied by Mrs. Lesley Doodo, Director, Legal, at the PPA and Board Secretary of the PPA Board.

On the establishment of the DDU, Mr. Lokko said the Unit was put together by the suspended CEO of the PPA to help in the study and scrutiny of applications for sole sourcing (SS) and restricted tendering (RT) by the procurement entities. It was established in 2017 and he happened to be the first chair of the Unit. The membership of the Unit consists of certain individuals with requisite skills and competencies such as risk, procurement, audit, finance, survey and legal (Director Legal of the PPA).

Regarding co-opted members of the Unit, Mr. Lokko said that the CEO at the time, in his wisdom, did not want a large unit. So, he decided to staff the unit with skills needed and others not frequently needed. Those not frequently needed were co-opted members and were contacted as and when their views were needed, such as Mrs. Lesley Doodo, Director Legal (PPA). He also said that members of the Unit have their respective schedules, but are only called upon to congregate to consider applications submitted to the PPA.

The Unit is not a Departmentalised section of the PPA even though it was intended to be created but required an approval from the Public Services Commission but the process has not been completed as it requires budgetary allocation and stuff like that to make it a recognised functional Unit of the PPA. Thus, it does not have any legal backing to be part of the PPA structures. He also indicated that there is a dedicated office at the PPA for the DDU with few staff assigned to it, but the rest have their schedules as staff of the PPA.

Mr. Lokko further said that Ebenezer (finance background), Harriet (procurement background), Fatima and Yakubo (procurement background),

are auxiliary staff of the DDU or Office. He added that Mr. Larbi and Ebenezer are permanent staff.

On the mode of selection of the staff for the Unit, Mr. Lokko said that with the permanent staff of the PPA, it was the suspended CEO who in a memo requested them to assist and in the said memo he mentioned persons to serve in the Unit. He said that the CEO also selected Abdul Karim to be assisting at meetings. He also indicated that aside the permanent staff, there were other persons from outside who serve as consultants. He said the Consultants are one Fatima H. and Harriet Mensah Tutuane.

On the functions of the DDU, Mr. Lokko explained that the applications are usually received and reviewed by the CEO and same minuted to the Chair of the DDU who goes through to check if everything makes sense and then sends same to the Administrator of the DDU for appropriate action. He indicated where he finds that the entity fails to attach the necessary documents, they are requested to submit those documents which, on receipt, are forwarded to the Administrator, the Coordinator of the Unit.

He stated that the DDU records title of the procurement (RT/SS) entity, source of funding, Justification for the RT/SS, reasonableness of price, and companies' eligibility or profile. In the case of works and roads, the Classification Certificates from the Ministry of Works and Housing, and Roads and Highways Authority respectively, must be attached. After these, the DDU then considers the price in the light of value for money. In case of goods, the prices are checked either through the internet, or price surveys. For consulting services, the terms of reference must be attached indicating the value of the assignment, expertise required and duration of the assignment. Where the price is found to be too high it recommends a price or a percentage (%) reduction of the price or requests for discounts where companies enjoy monopoly or the quantity requested.

From these, the DDU makes recommendation either on rejection or approval. He added that the work is shared among the individuals of the unit based on their expertise and put together and peer reviewed by the DDU team and same sent to the CEO. The DDU then meets with the CEO if there is time to discuss certain portions of its report that are not clear. A summary of the report is then presented to the Board by the CEO for final approval. He again said that the DDU may sometimes recommend for the request of certain information and if accepted by the Board, it goes through the same process as a fresh application.

On the content of the memo assigning persons to the DDU, he said that it informed the members of their nomination for the Unit as well as the work required of them. According to him, they worked with the suspended CEO to develop the template, which became the criteria for carrying out the functions of the DDU. He indicated that the CEO does not sit in the DDU deliberations, but after submitting the reports, he may convene a meeting to discuss certain things in the report where time allows.

On the companies' profile, he reiterated that the DDU checks the registration details, tax Clearance Certificates, SSNIT Clearance, the object of business, etc. The DDU is not in the position to know who the subscribers of the companies submitted by the entities are, as the information does not include such details.

On the CEO's interest in companies, he said the CEO has never discussed anything concerning TDL with the DDU. He only got to know about it when the story was published in the media. Regarding how the DDU made recommendations on same ownership of some companies, he said that it is either the addresses or telephone numbers that gave them away. He further indicated that none of the co-opted members of the DDU, or the Board Members, had informed the DDU of the interest of the CEO in a company or that the CEO ever declared his interest at a meeting.

### **Dr. Emmanuel Yaw Boakye**

Dr. Emmanuel Yaw Boakye, Technical Director, of the former Ministry for Procurement (MoP) and a Member of the PPA Board, was a Project Director of the Kristo Asafo Group of Companies and a Board Member of Kristo Asafo Schools prior to his appointment to the Ministry for Procurement at the Office of the President and subsequently to the Board of the PPA.

The Commission received and reviewed information from the PPA and other Procurement Entities in the course of its investigations and discovered that Dr. Yaw Boakye took part in the Board Technical Committee (BTC) Meeting No. 25 of 2019, which considered and approved an application by the Ministry of Education (MoE) to procure 27 Pickup trucks at the cost of Two Hundred and Seventy Million Ghana Cedis (GH¢270,000.000.00) from **Kantanka Automobile Company Ltd**, a subsidiary of the Kristo Asafo Group of Companies.

The Commission, therefore, invited Dr. Boakye on the matter on 14th January 2021, which he obliged. He was accompanied by Mr. Samuel N. Baidoo, a lawyer and Vice-Chair of the Board of the PPA.

Dr. Boakye told investigators that he was also a Deputy General Secretary of Kristo Asafo Church, a position he held for over 20 years, apart from being a Board Member of the Kristo Asafo Schools, which is part of the Kristo Asafo Group of Companies. He also told investigators that Kantanka Automobile Ltd is another company under the Kristo Asafo Group of Companies. He indicated that he resigned as Board Member of the Kristo Asafo Schools in 2017. He was also appointed to the PPA in 2017.

Dr. Yaw Boakye disclosed that he also worked as a lecturer at the University of Ghana for two years when he obtained his PhD. He later joined politics and luckily his party (New Patriotic Party) won the 2016 elections and he was appointed to various positions.

On his relationship with the founder of the Kristo Asafo Church and Kantanka Group of Companies, Dr. Boakye said that he is a member of the Kristo Asafo Church and that the founder, Apostle Kwadwo Safo Kantanka, took care of him. He also said that he considers Apostle Kwadwo Safo as his father and Apostle Kwadwo Safo's children as siblings.

He also admitted that he participated in the 25th Meeting of the BTC in 2019 that discussed and approved the request made to the PPA Board by the MoE for approval to use single source procurement to engage Kantanka Automobile Ltd to supply 27 Kantanka pickup vehicles.

On why he did not recuse himself from that 25th meeting knowing his close relationship with the company in whose interest the application was made, he said that he did not disclose that fact because *"the fact that the founder of Kristo Asafo Group of Companies had helped him before or took care of him, does not totally amount to having a relationship with him"*. He also said that he has no interest in the companies, and not also a Board Member of the companies. More so, per the records of proceedings at the meeting, he did not influence the decision of the Board. He further argued that there is no evidence to show that somebody was going to make money out of it. Moreover, the companies now belong to one of the founder's son.

On assets declarations, Dr. Boakye repeated his response to the Commission dated 18th August, 2020 (*supra*) in which, according to him, was the advice provided him by his lawyers. He, however, indicated that if it is the view of the Commission that he is required to declare his assets and liabilities, he was prepared to do so.

### **Hassan Mikati, Device Ltd.**

The Commission had two (2) interviews with Hassan Mikati, Managing Director of Device Ltd. The first interview was on 11<sup>th</sup> March, 2021 at the office of Device Ltd located on the Spintex Road, Accra, and the other on

17<sup>th</sup> March, 2021 at the office of the Commission, Old Parliament House, where his Lawyer, Samuel Dubik Mahama, Esq, was present.

Mr. Hassan confirmed that, Device Ltd had transacted business with the Public Procurement Authority (PPA) in the last four (4) years preceeding the investigation. Hassan said that the only transaction was the supply of one vehicle, a Land Cruiser V8, to the PPA. He explained that he displays brand new cars in front of his shop for sale. Some gentlemen came from the PPA and expressed interest in a Land Cruiser for its Chief Executive Officer. The gentlemen then asked him if he would like to go for a tender, and he said that on condition that they would pay on time. They brought him the tender document which he signed and later in December, 2017 they came for the car. He added that they promised to pay him early January or February 2018, but it took them six (6) months to pay him.

According to Hassan, the price for the vehicle was very cheap because new types of Land Cruisers were being released into the market. He said the vehicle was sold between USD75, 000.00 and USD78, 000.00. He added that the prices of the vehicles were denominated in Dollars but payable in Cedis.

On how he got know of the Contract for the supply of the Vehicle (V8) to the PPA, Hassan said somewhere in 2017 some persons were at his shop to make enquiry about vehicles on sales at his shop. The said gentlemen later came to inspect a Toyota Land Cruiser V8 for the Chief Executive Officer (CEO). According to him, he never knew that AB Adjei was the CEO of the PPA. As a matter of fact, he knew AB Adjei three (3) months before the transaction took place. AB Adjei used to visit his shop located on the Spintex Road to purchase air-conditioners (ACs) and other electronics. He added that at the time, he did not know that he was the CEO of PPA.

According to Hassan, the PPA brought him the contract document for the supply of the V8, which he signed. It was later communicated to him that he

had won the contract. The vehicle was registered and delivered in December, 2017.

Payment for the vehicle was to be effected in January or February 2018, but was delayed for six (6) months. He indicated that he was paid between GHS300,000.00 and GHS330,000.00 through money transfer.

Concerning moneys paid into AB Adjei's account, Hassan said it was in respect of a refund of a deposit AB Adjei made for the purchase of a **Lexus 570 vehicle**. He explained that during one of AB Adjei's visits to his shop, he (Adjei) expressed interest in a Lexus vehicle displayed for sale in front of his shop. The cost of the said vehicle was USD160,000.00. He said that AB Adjei had wanted to swap his Range Rover for the Lexus, which he (Hassan) declined because the terms of payment were not favourable to him. So, AB Adjei opted for an outright purchase and made an initial deposit of USD20,000.00, equivalent in Cedis, and to pay the balance after selling his Range Rover. However, after a week, Adjei could not raise the balance and suggested to pay the balance over a period of one (1) year, which he (Hassan) declined and, therefore, refunded the initial deposit to Adjei in two installments of GHS43, 000.00 each.

Hassan said he did not have a Ranger Rover at the time of Adjei's visit and that the negotiation was in respect of a Lexus vehicle and not a Range Rover car. Samuel Dubik Mahama, Counsel for Device Ltd., however, indicated that the swap of the Range Rover was between **Stoubus Ltd** and Adjei. Counsel explained that Stoubus Ltd. of which he is also their Lawyer, had a wide range of vehicles including Range Rovers and Toyota Land Cruisers and Adjei wanted to swap his Range Rover for a higher version **SVRS**. Counsel said at the time the SVRS was selling around USD260,000.00, which he (Adjei) could not afford and so he resorted to the Lexus from Stoubus Ltd. and not from Device Ltd.

Hassan was unable to submit to the Commission copies of the invitation letter, award of contract letter and Bank Statement of the account into which AB Adjei paid the initial deposit of USD20, 000.00 in respect of the Lexus he (Adjei) wanted to purchase from Device Ltd.

### **Consideration of Documents:**

Article 219 (1) provides:

**“The powers of the Commission shall be defined by Act of parliament and shall include the power –**

**(a) to issue subpoenas requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission”.**

Section 8 on Special Powers of Investigation:

**(1)By virtue of Article 219 of the Constitution, the Commission may, for the purposes of performing its functions under this Act,**

**(a) issue subpoenas requiring the attendance of a person before the Commission and the production of a document or record relevant to an investigation\_by the Commission;**

Set out below are the relevant portions of documents obtained in the course of the investigation by the Commission.

### **The Registrar General’s Department**

At the request of the Commission, the Office of the Registrar-General provided information on the following companies as having been incorporated by Mr. Adjei:

1) Talent Discovery Limited (TDL);

- 2) TDL Agro Industry;
- 3) TDL Freight Forwarding;
- 4) TDL Transport and Logistics Services;
- 5) Frosty Ice Natural Mineral Water Ltd; and
- 6) ABM Logistics (GH) Limited

### **Talent Discovery Limited (TDL)**

TDL was incorporated as a private company limited by shares on **19th June 2017** to carry on business as Manufacturers Representatives, Imports and Exports of General Goods, Logistics and Transportation Services, General Merchants, Procurement Consultancy, Management Consultancy, Financial Engineering Consultancy.

The two Directors are:

- Adjenim Boateng Adjei      30,000 shares, and
- Francis Kwaku Arhin      20,000 shares.

### **TDL Agro Industry**

TDL Agro Industry was incorporated on **15th May 2018** with registration number SN002832018 and TIN C0008677492. The nature of business of the company is Farming, Cultivation of Cassava and Export of Starch.

TDL is listed as its parent Company and the Representative of the parent company is Francis Kwaku Arhin (brother-in-law of Mr. Adjei)

### **TDL Freight Forwarding**

This company was incorporated on **15th May 2018** with registration number SN002842018 and TIN C0008677492. Its nature of business is Transportation Services and Haulage Services.

The parent Company is TDL and the parent company representative is Francis Kwaku Arhin.

### **Frosty Ice Natural Mineral Water Limited**

This company was incorporated on **29th January 2019** as a private company limited by shares with its authorised business being the production of

mineral water. The registration number is CS026432019 with TIN C0021653607. It commenced business on 29th January 2019. The company was to be registered with 600,000 shares of no par value.

The Directors are:

- Adjenim Boateng Adjei 500 shares and
- Mercy Adjei (Mr. Adjei's spouse) 500 shares.

### **ABM Logistics (GH) Limited**

It was initially registered under the Registration of Business Names Act, 1962 (No. 151) as ABM Logistics on **30th July 2003**, but commenced business on 16th July, 2003 as General Merchant, Import & Export Services, Exporters of Salt, and Transport Haulage. Logistics Consult (GH) Limited was entered as its corporate name. It was converted under sections 27 and 28 of the Companies Act, 1963 (Act 179) on 13th November, 2007 to ABM Logistics (GH) Limited with registration number CA-39,789 and TIN 524V028360. After incorporation, a resolution was passed on 3rd August, 2015 to add to the business buying and selling and exportation of gold.

The directors are:

- Adjenim Boateng Adjei 70,000,000
- Mercy Adjei (spouse) 30,000,000.

From the information, TDL is described as "*parent company*" in:

- TDL Transport & Logistics Services;
- TDL Freight Forwarding, and
- TDL AGRO Industry

Frosty Ice Natural Mineral Water Limited and ABM Logistics do not have such a description in their registration documents.

### **Directorship in other Companies**

The records from the Office of the Registrar-General also show that Mr. Adjei is a director in the following companies:

- i. ABM Logistics (GH) Limited;
- ii. Ada Safari Resort Limited;
- iii. Aqua Safari Resorts Limited;
- iv. Beach Front Stevedoring Company Limited;
- v. Bestblend GH Limited;
- vi. Bestblend West Africa Limited;
- vii. Bestman Offshore Gh Limited;
- viii. Diligent Cover Limited;
- ix. Holiday Hills Resort Limited;
- x. Ocean View Amusement Limited;
- xi. Rosefield Oil Ghana Limited;
- xii. Runway View Association;
- xiii. Springfield Resource Development Limited;
- xiv. Supply Chain Support Services Centre Limited;
- xv. Talent Movers Gh Limited;
- xvi. AAC Financial Services Limited;
- xvii. Canduns International Limited;
- xviii. CFR Ghana Limited, and
- xix. TDL Pay Ghana Limited

### **Financial Intelligence Centre**

Information received from the Financial Intelligence Centre (FIC) in CD ROM show that Mr. Adjei, apart from his directorship and shareholding interests in TDL, and TDL related companies, has directorships in 13 companies. The companies where Mr. Adjei is either a shareholder or director or both, include:

- i. Aqua Safari Resorts Limited
- ii. Beach Front Stevedoring Company Limited
- iii. Bestblend GH Limited
- iv. Bestblend West Africa Limited

- v. Bestman Offshore Gh Limited
- vi. Diligent Cover Limited
- vii. Holiday Hills Resort Limited
- viii. Rosefield Oil Ghana Limited
- ix. Runway View Association
- x. Springfield Resource Development Limited
- xi. Talent Movers Gh Limited
- xii. AAC Financial Services Limited
- xiv. CFR Ghana Limited

- **Mr. Adjei's Bank Accounts and Other financial interests:**

The information received from the FIC also show that Mr. Adjei has several bank accounts, both foreign and local currency, in a number of banks in the country including Stanbic Bank, Ecobank, Republic Bank and UMB.

**Stanbic Bank, Airport City Branch:**

Mr. Adjei has three accounts at Stanbic Bank, Airport City Branch, Accra, i.e., USD, EURO and Ghana Cedi Accounts.

In respect of his **USD account** (account number withheld), Mr. Adjei opened it on 03-04-2017, within a month after his appointment with an opening balance of \$5,000. Four months after opening the account, significant cash amounts had been deposited into that account, including the following:

**Cash Deposits:**

From 01-08 -2017 - 08-09-2017                      \$125,000     (Deposited by Faustina Mildred and Christabel).

The 1<sup>st</sup> Respondent withdrew \$30,000 and \$10,000 cash from his account in a day. On that same day (08-09-2017), Christabel deposited cash amount of \$15,000 into the account.

The 1<sup>st</sup> Respondent again made a cash withdrawal of \$40,000 on 27-09-2017 and about a week later, he made a cash deposit of \$50,000. Earlier, Christabel made a cash deposit of \$40,000.

On 15-02-18, Faustina Mildred made a cash deposit of \$50,000 and another \$100,000 on 21-03-18. Five days after that, one Kofi Appiah Dwomoh made a cheque payment of \$100,000 into the account.

As of 28-08-19, the 1<sup>st</sup> Respondent had \$516,225.00 to his credit and his debits stood at \$504,607.87.

Regarding his **Cedi Account** no. 9040002313337 at the same bank, it was opened on 21-01-2017 (before his appointment) with an amount of GH¢30,000. Subsequently, various cash amounts have been deposited regularly into the account, predominantly by Faustina Mildred (sometimes described as Faustina Mildred Cronze or Faustina Tachie Menson), Christabel (“RO”) and Aisha, since the 1<sup>st</sup> Respondent was appointed CEO of PPA.

As of 29-08-19 the 1<sup>st</sup> Respondent’s Cedi account at Stanbic Bank had over GH¢3.83 million credit with an over GH¢3.81 million debit.

The 1<sup>st</sup> Respondent’s **EURO Account** is the third account at Stanbic Bank, Airport City Branch. As of 29-08-19, his balance on the Euro Account stood at EU54,500.00 (credit) and EU37,333.00 (debit).

The 1<sup>st</sup> Respondent confirmed that he hand-delivers the cash to Faustina and Christabel, whom he described as his relations officers at the Stanbic Bank, to pay the monies into his account.

**Universal Merchant Bank (UMB) Dollar Account:** The dollar account at UMB has the Account Name as “428872”. The Transaction summary indicates the following:

<b>Booking date</b>	<b>Description</b>	<b>Credit (USD)</b>
20-12-2018	Cheque payment by OAB Adjei RKP	60,000
21-12-18	Cheque payment by OAB Adjei RKP	60,000
02-01-19	Cheque payment by OAB Adjei RKP	50,000
11-03-19	House cheque credit	48,000

**UMB Cedi Account No. 0251367786027**

Further to the evidence by AB Adjei in the interview on 26<sup>th</sup> January 2021, that he survived while a CEO of the PPA for 4 years without salary because over the years he had acquired assets and made investments, some of which he recapitalized and which sustained him without the salary, the Commission received information on another account Mr. Adjei maintained at UMB from the FIC in a letter dated 5<sup>th</sup> February 2021.

The said UMB Cedi Account no. 0251367786027 had “balance at period start” (i.e. opening balance) as of 15 August 2017, as GHC 1000.00 being a cheque deposit. Between 15 August 2017 and 29 November 2019, the transactions on the account show that Mr. Adjei, Elisabeth Naami Grant, Valentine, and others, lodged various sums of Cash into this account ranging from GHC 30,000 to GHC 530,000. Below is an extract of payments:

**Elisabeth Naami Grant:**

<b>S/ no .</b>	<b>Booking Date</b>	<b>Value Date</b>	<b>Reference</b>	<b>Description of Transaction</b>	<b>Amount (GHS)</b>
1	04/09/17	04/09/17	TT1724732561	Cash Deposit by Elizabeth	50,000.00

				Naami Grant	
2	04/09/17	04/09/17	TT1724735649	Cash Deposit by Elizabeth Naami Grant	100,000.00
9	02/11/17	02/11/17	TT1730659573	Cash Deposit by E.N. Grant	150,000.00
18	22/12/17		TT1735663438	Cash Deposit by Naami Grant	75,000.00
21	12/01/18		TT1801210970	Cash Deposit by E.N. Grant	400,000.00
37	10/05/18		TT181304NJI V	Cash Deposit by E. N. Grant	25,000.00
76	13/12/18		TT18347WM 6LK	Cash Deposit by Elizabeth Naami Grant	30,000.00

**Valentine:**

s/ no .	Booking Date	Value Date	Reference	Description of Transaction	Amount (GHS)
23	01/03/18		TT1806041211	Cash Deposit by Valentine	30,000.00
24	09/03/18		TT1806807037	Cash Deposit by Dela	50,000.00
25	14/03/18		TT1807351274	Cash Deposit by Valentine	15,000.00
26	15/03/18		TT1807462214	Cash Deposit by Valentine	30,000.00
27	20/03/18		TT1807900030	Transfer	82,089.10
29	06/04/18		TT18096BDD F	Cash Deposit by	30,000.00

				Valentine	
30	17/04/18		TT18107KZC 7Y	Cash Deposit by Valentine	100,000.00
31	18/4/18		TT181084DD XB	Cash Deposit by Valentine	30,000.00
32	26/4/18		TT18116PH5 KL	Cash Deposit by Valentine	50,000.00
33	30/4/18		TT18120DRC 0Q/MUC	Cash Deposit by Randy Adjei	54,900.00
34	02/05/18		TT18122YKO MV	Cash Deposit by Valentine	10,000.00
75	11/12/18		TT183455HP 3L	Cash Deposit by Valentine	499,730.00
75	11/12/18		TT183455HP 3L	Cash Deposit by Valentine	499,730.00
25	14/03/18		TT180735127 4	Cash Deposit by Valentine	15,000.00
26	15/03/18		TT180746221 4	Cash Deposit by Valentine	30,000.00
27	20/03/18		TT180790003 0	Transfer	82,089.10
28	21/03/18		TT180801FQ8 9	Cash Deposit by Dela	100,000.00
29	06/04/18		TT18096BDD F	Cash Deposit by Valentine	30,000.00

30	17/04/18		TT18107KZC 7Y	Cash Deposit by Valentine	100,000.00
31	18/4/18		TT181084DD XB	Cash Deposit by Valentine	30,000.00
32	26/4/18		TT18116PH5 KL	Cash Deposit by Valentine	50,000.00
33	30/4/18		TT18120DRC 0Q/MUC	Cash Deposit by Randy Adjei	54,900.00
34	02/05/18		TT18122YKO MV	Cash Deposit by Valentine	10,000.00
38	16/05/18		TT181362SNS Z	Cash Deposit by Dela	20,000.00
39	18/05/18		TT18138TW N7V	Cash Deposit by Dela	30,000.00
40	24/05/18		TT181445GQ LW	Cash Deposit by Valentine	20,000.00
41	28/05/18		TT18148SPY GX	Cash Deposit by Valentine	130,000.00
42	31/05/18		TT181517BJ9 Z	Cash deposit by Valentine	50,000.00
43	31/05/18		TT18157BJ9Z	Cash Deposit by Valentine	62,000.00
44	14/06/18		TT18165XWK N7	Cash Deposit by Valentine	10,000.00
45	28/6/18		TT18179RZ13	Cash	22,000.00

			3	Deposit Valentine	
46	4/7/18		TT18185NVK 6M	Cash Deposit by Valentine	10,000.00
47	5/7/18		TT18186QRX JI	Cash Deposit by Valentine	100,000.00
48	6/7/18		TT181873KT7 5	Cash Deposit by Valentine	20,000.00
49	19/7/18		TT18200MM YBD	Cash Deposit by Valentine	70,000.00
50	9/08/18		TT18221VZ61 N	Cash Deposit by Valentine	10,000.00
51	9/08/18		TT18221P06R B	Cash Deposit by Valentine	200,000.00

Dela:

1	21/03/18		TT180801FQ8 9	Cash Deposit by Dela	100,000.00
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**AB Adjei (1<sup>st</sup> Respondent):**

s/ no .	Booking Date	Value Date	Reference	Description of Transaction	Amount (GHS)
80	18/1/19		TT19018HN33 M	Cash Deposit by AB Adjei	10,000.00
81	25/1/19		TT19025430C D	Cash Deposit by	20,000.00

				AB Adjei	
82	4/02/19		TT19035TT10B /OXF	Cash Deposit by AB Adjei	100,000.00
83	4/02/19		FT1903553239/ BNK	Cash Deposit by AB Adjei	100,000.00
85	05/2/19		TT19036Q1GY V	Cash Deposit by AB Adjei	30,000.00
98	8/4/19		TT19098LPRY 9	Cash Deposit by AB Adjei	50,000.00
99	8/4/19		TT19098H62W 4	Cash Deposit by AB Adjei	50,000.00
10 0	9/4/19		TT19099BVYH	Cash Deposit by AB Adjei	249,000.00
10 3	30/4/19		TT19120YW73 Z	Cash Deposit by AB Adjei	125,000.00
10 4	7/5/19		TT19127BKW7 4	Cash Deposit by AB Adjei	150,000.00
10 6	24/5/19		TT19144MWM ZJ	Cash Deposit by AB Adjei	500,000.00
10 7	13/6/19		TT19164Q11JZ	Cash Deposit AB Adjei	50,000.00
10 8	21/6/19		TT1917294NBJ	Cash Deposit by AB Adjei	200,000.00
10 9	24/6/19		TT191752K4H 1	Cash Deposit by AB Adjei	20,000.00

11 0	16/7/19		TT191976Z9X P/BNK	Cash Deposit by AB Adjei	200,000.00
11 1	18/7/19		TT19199G87Z 1	Cash Deposit by AB Adjei	150,000.00
11 2	24/7/19		TT192054HN0 G	Cash Deposit by AB Adjei	530,000.00
11 3	9/8/19		TT19221RJHC Q	Cash Deposit by AB Adjei	90,000.00
11 4	20/8/19		TT1923271364	Cash Deposit by AB Adjei	200,000.00

**Total cash deposits into this account alone in the two-year period between August 2017 and August 2019 amounted to GHS 5,697,530.00.**

By letter dated 18<sup>th</sup> March 2021, the Commission pursuant to section 15 of Act 456, requested AB Adjei to “...furnish the Commission with evidence of the sources of every deposit made into your UMB Cedi account number 0251367786027 and the corresponding tax certificates covering such incomes from 15 August 2017 to 29 November 2019.” The Commission attached a copy of the bank records it obtained from the FIC to the said letter for ease of reference.

In his response to the Commission’s letter, K-Archy & Company, solicitors for AB Adjei, wrote:

*Our client confirms there was a meeting between himself and the Commission on 26th January, 2021 but denies the assertion that at the said meeting he informed investigators that monies deposited into his Universal Merchant Bank (UMB) Cedi account were from investments he had made. For the avoidance of doubt, the said meeting only discussed whether our client received salary in the course of his employment, the reason for those deposit made into his account by a car dealership company and certain issues pertaining to board allowances. The source of money deposited*

*into his UMB account or any other account for that matter was never discussed.*

*In addition, our client contends that even if the said statements were made at the said meeting, he does not consider himself obliged to respond to the inquiry being made by the Commission on the basis that there is no complaint against him regarding the investigation of his personal account as a public officer. The complaints in this matter bother and concern the allegations that our client established companies, sold those contracts and enriched himself thereby. In our humble view, the duty of the Commission in relation to the complaint is basically to determine whether our client abused his office to procure contracts in order to sell same and enrich himself and our client would be willing, as he has done in the past, to provide information regarding the complaint but would not participate in any form of inquiry not borne out by the complaint.*

*We also wish to bring to your attention that in a related matter in the Commission's report dated 27th day of October, 2020, in the matter of the Office of the President as complainant and our client as the Respondent, your office had made conclusions on the inquiry which you now seek to make. On pages 164 and 187, the Commission noted that it had obtained information from FIC on our client's bank accounts and when our client was confronted with the said accounts (which is denied), he could not explain "the source of the large volumes of excess wealth that passed through his bank accounts between March 2017 and August 2019". It is therefore our position that having concluded in the said official report that our client had failed to explain the source of money in his bank accounts, the present request is superfluous even if our client felt it was within the scope of the complaint before the Commission.*

### **Ghana Ports and Harbours Authority**

The GPHA, in response to the Commission's request for information to assist in the investigation, provided documents that show that TDL was shortlisted to tender for the award of a number of contracts based on

restricted tendering method of procurement (RT) in the period 2017-2019. These are:

- i. Supply of Mobile Column Lifts (Qty 1) Takoradi Port;
- ii. Rehabilitation of James Town Lighthouse Facilities-Accra;
- iii. Supply, Installation and Commissioning of 30 Meter High Mast Poles Complete with Lantern Carriageway at Tema Port;
- iv. Factor Correction and Energy Demand Reduction Equipment at the Reefer Container Terminal-Tema Port.

**Contract for the Supply of Mobile Column Lifts (Qty. 1) Takoradi Port:**

The GPHA made a request for Approval to procure the supply of a Mobile Column Lift for the Mechanical Department of Takoradi Port through restricted tendering.

In its letter to the PPA, Ref: DG/HQ/C.3/Vol.4/819, dated 13<sup>th</sup> November 2018, the GPHA writes:

*“The Ghana Ports and Harbours Authority intends to seek your authorisation to procure a Mobile Column Lift for the Takoradi Mechanical Engineering Department (Column Lift) through restrictive tendering. The equipment would be used for lifting heavy duty equipment at the Mechanical Workshop.*

*Accordingly, GPHA is seeking your authorisation to invited (sic) the underlisted eligible firms to submit tenders for the above mentioned project:*

1. TALENT DISCOVERY LIMITED
2. DEGRILLION TECHNICAL SUPPLIES
3. BENERGY GHANA LIMITED
4. WHITE COWRY W/A LIMITED

*The estimated cost of the project is GHC 160,000...”* and documents of the shortlisted firms were provided the CEO.

The documents attached to the request by GPHA to PPA included the incorporation and other documents of the eligible firms: incorporation information from the Registrar-General's Department, SSNIT and Tax clearance certificates, among others.

The CEO received the application by the GPHA and forwarded same to the DDU for its consideration. Subsequently, the PPA Board at the Board Technical Committee Meeting no 20 of 13 December 2018 considered the request for the supply of the Colum Lift.

The minutes of the Board Technical Committee Meeting no. 20 (020/2018) referenced in the PPA letter had the following members present:

- Mrs. Ernestina Swatson Eshun - Chairperson
- Mr. Adjenim Boateng Adjei - CEO/Member
- Dr. Emmanuel Yaw Boakye - Member
- Hon. Godfred Dame - Member

The 20th Meeting considered, among others, Minutes of the 9th Emergency Meeting held on Friday 30th November, 2018 as well as 49 (Forty-nine) Single Source (SS), Restricted Tendering (RT), supplementary applications and responses to queries raised, which were presented in a Summary Table.

The meeting commenced at 10:30pm after a short prayer by the CEO (Respondent).

On the Summary Table is Application No. 18, Re: DG/HQ/C.3/VOL. 4/819 dated 13/11/18 in relation to the Column Lift and received by the PPA on 16th November, 2018:

**Summary of the Application:** GPHA is requesting for approval from PPA to use Restricted Tendering Method for the procurement of Mobile Column Lift for the Takoradi Port at a cost of GHC160,000.00.

**Justification and Relevant Clause provided by the Entity:** The Ghana Ports and Harbour Authority intends to procure Mobile Column Lift for the Takoradi Mechanical Engineering Department. The equipment would be used for lifting heavy duty equipment at the Mechanical Workshop. Below are the Four (4) shortlisted firms:

- i. M/S Talent Discovery Limited
- ii. M/S Bernegy Ghana Limited
- iii. M/S Degrillion Technical Supplies
- iv. M/S White Cowry W/A Limited

The GPHA's application did not have any justification or relevant Clause.

Board Decision: Approved as recommended that *"...the Board grants approval to GPHA under section 38 (b) of Act 663 as amended. GPHA should ensure the winning tender submit current SSNIT and Tax Clearance Certificate"*

*"The Chairperson called on the CEO to arrange for another meeting the following week in view of the backlog over the holidays...."*

The 1<sup>st</sup> Respondent, writing as the CEO of the PPA, in a letter dated 17th December 2018, Ref: PPA/CEO/12/2209/18, wrote:

*"....At the Board Technical Committee Meeting no 20 (020/2018) held on Thursday 13<sup>th</sup> December 2018, the Board granted approval to the **Ghana Ports and Harbours Authority** in accordance with Section 38 (b) of Act 663 as amended, to use Restricted Tendering Method to invite the under listed companies to tender for the procurement of a Mobile Column Lift for the Takoradi Mechanical Engineering Department at an estimated cost of GHC160,000:*

1. TALENT DISCOVERY LIMITED
2. DEGRILLION TECHNICAL SUPPLIES
3. BERNERGY GHANA LIMITED
4. WHITE COWRY W/A LIMITED..."

On receipt of the approval by the PPA to proceed to invite the shortlisted companies, the GPHA invited the companies to submit tenders and eventually awarded the contract no. IND.338/MECH.ENG/TD 18 to TDL, which was contained in a Notification of Intention to Award Letter to TDL dated 20th June 2019, ref. no. DG/HQ/C.3/VOL.7/373.

**Mast Poles:** GPHA request to use RT for the Supply, Installation and Commissioning of 30-Meter-High Mast Poles (Poles) was considered at the 21st Meeting of the PPA Board Technical Committee Meeting held on 23rd January 2019.

The Minutes of that meeting show that four (4) members including the Respondent were present. The 1<sup>st</sup> Respondent said a short prayer at the commencement of the meeting.

The Committee considered 76 (seventy-six) Single Source (SS), Restricted Tendering (RT) applications and responses received to queries on earlier applications at its 21st Meeting, as per a Summary Table.

**The Poles** application appears at 37. Application No.: RT/22/12/18, received by the PPA on 10/12/18, GPHA ref. No. DG/HQ/C.3/VOL.5/876 dated 29/11/18:

**Estimated Contract Cost-** GHC2,065, 000.00

**Summary of Application:** GPHA is seeking approval from PPA to use the Restricted Tendering Method for the supply, installation of 30-Meter-High Mast Poles Complete with Lantern Carriageway at the Tema Port at an estimated cost of GHC2,065,000.00. The following firms have been shortlisted to participate in the tendering process:

- i. Powastysystem Eng. & Electrical Service Ltd
- ii. Power Factor Limited
- iii. Technolights Limited
- iv. Pro Distro Global Ltd
- v. Ba-Iseng Enterprise Limited

vi. Talent Discovery Limited

**Justification and Relevant Clause Provided by Entity:** NIL

**Consultant/Contractor/Suppliers Qualification:** All shortlisted companies are registered in Ghana and possess valid statutory documents.

**Conclusion:** We recommend that the Board grant under section 38 (b) of Act 663 as amended to enable the GPHA to undertake the procurement activity. GPHA should be advised to revise the estimated cost downwards by some 15% to enhance the achievement of value for money.

**Decision:** Approved as Recommended with 10% discount as opposed to the proposed 15% discount.

Following the 21st Meeting, the CEO, in a letter dated 24th January 2019, ref. No. PPA/CEO/01/102/19 conveyed the decision of the Board at its 21st Meeting to approve the request of the GPHA for the Poles:

*“At the Board Technical Committee Meeting No. 21 (021/20180 held on Monday, 23rd January 2019, the Board granted approval to Ghana Ports and Harbours Authority (GPHA), in accordance with section 38 (b) of Act 663 as amended, to use Restricted Tendering Method to invite the under listed companies to tender for the supply, installation and commissioning of a 30-meter-high Mast Poles complete with Lantern Carriageway at Tema Port at a total estimated cost of **GHC350,000.00;***

*Messrs. POWASTYSYSTEMS ENG. & ELECTRICAL SERVICE LTD*

*Messrs. POWER FACTOR LIMITED*

*Messrs. TALENT DISCOVERY LIMITED*

*Messrs. TECHNOLIGHTS LIMITED*

*Messrs. PRO DISTRO GLOBAL LTD*

*Messrs. BA-ISENG ENTERPRISE LIMITED...”*

The GPHA did not provide any justification/reasons why it was seeking to use RT in its application.

## **James Town Lighthouse Facilities Contract:**

The records show that GPHA requested for approval from the PPA to use RT method of procurement in a letter ref. DG/HQ/C.3/Vol.5/872, dated 29 November 2018. The companies listed were:

1. Grovtex Ventures Limited
2. Canduns International Ltd
3. Talent Discovery Limited
4. Abitjack Contruction Works Ltd

On receipt of the application from the GPHA, the CEO of the PPA (1<sup>st</sup> Respondent) wrote requesting for priced bill of quantities from the GPHA. The letter with Ref. No. PPA/CEO/01/58/19, dated 22 January 2019, provides:

**“...RE: REQUEST FOR APPROVAL FOR RESTRICTIVE TENDERING PROCURMENT OF WORKS AT THE PORT OF TEMA-REHABILITATION OF JAMES TOWN LIGHTHOUSE FACILITIES, ACCRA**

*We make reference to your letter No. DG/HQ/C.3/ VOL.5/872, of 29<sup>th</sup> November, 2018 on the above mentioned subject.*

*The content of your letter is duly noted. You are required to furnish PPA with the following documents to facilitate the processing of your request:*

*The Priced Bill of Quantity of the works; and*

*Ministry of Works and Housing Classification Certificate of Canduns International Ltd.*

*Counting on your cooperation*

*AB ADJEI*

*CHIEF EXECUTIVE*

*THE AG. DIRECTOR-GENERAL*

*GHANA PORTS AND HARBOURS AUTHORITY, TEMA”*

The GPHA supplied the information requested by the CEO of the PPA in its letter Ref. No. DG/HQ/C.3/VOL. 5/115 dated 11 February 2019. It states in part:

“...RE: REQUEST FOR APPROVAL FOR RESTRICTIVE TENDERING  
PROCUREMENT OF WORKS AT THE PORT OF TEMA-  
REHABILITATION OF JAMES TOWN LIGHTHOUSE FACILITIES,  
ACCRA

*We make reference to your memorandum No. PPA/CEO/01/58/19 dated 22<sup>nd</sup> January 2019 in respect of the above-mentioned subject matter.*

*Please find attached:*

6. *Bills of Quantity for the Project*

*Ministry of Works and Housing Classification Certificate and other statutory documents on Canduns International Ltd could not be found...”*

MICHAEL A. LUGUJE  
AG. DIRECTOR-GENERAL

**The Lighthouse Application** was considered at the 23<sup>rd</sup> Meeting of the Board Technical Committee of the PPA dated Friday 15 March 2019.

MINUTES OF THE 23RD TECHNICAL COMMITTEE MEETING HELD ON WEDNESDAY 15TH MARCH 2019 AT THE PPA BOARD ROOM 6TH FLOOR, SSNIT EMPORIUM, AIRPORT CITY

1.0 ATTENDANCE

1.1 PRESENT

1. Mr. Samuel R. Nee Baidoo - Member/Vice Chairman
2. Mr. Adjenim Boateng Adjei - CEO/Member
3. Dr. Emmanuel Yaw Boakye - Member

1.2 APOLOGIES

1. Mrs. Ernestina Swatson Eshun - Chairperson

2. Hon. Godfred Dame - Member

## 2. IN ATTENDANCE

1. Mrs. Lesley Dodoo - Board Secretary
2. Wilhelmina Asabea Bampoe - Assistant Board Secretary
3. Mr. Abdul Kaadri Zigani - Due Diligence Unit

## 2.0 AGENDA

### 2.1 Opening

2.2 Confirmation of Minutes and SSRT Table of the 22nd SSRT Meeting held on Wednesday 20th February, 2019.

2.3 Consideration of responses received to earlier Applications.

2.4 Consideration of New SSRT Applications.

2.5 Any Other Matters

## 1.0 OPENING

The Mr. Baidoo welcomed all to the 23rd Board Technical Committee meeting. He informed members that he would Chair the meeting on behalf of the Chairperson who had travelled on official duty.

The meeting commenced at 10:00 am after a short prayer by the CEO.

## 2.0 CONSIDERATION AND CONFIRMATION OF MINUTES AND SUMMARY TABLES OF 22ND SSRT MEETING HELD ON WEDNESDAY 20TH FEBUARY, 2019

Members considered the Minutes and Summary of Tables of the 22nd SSRT meeting held on Wednesday 20th February, 2019 and the various actions taken.

The Chairman called for motion for the acceptance of the Minutes in the absence of corrections and amendments. Dr. Emmanuel Boakye moved for the acceptance of the Minutes as a true reflection of the day's proceedings and same was seconded by CEO.

2.1 CONSIDERATION OF RESPONSES RECEIVED TO EARLIER APPLICATIONS

The Chairman called on the CEO to lead briefing on the responses received from Entities on applications earlier queried or for which additional satisfactory documents and information were requested. The CEO took members through the responses attached and the recommendations on same as well as steps taken by Management in light of the responses.

2.2 CONSIDERATION OF NEW APPLICATIONS – REQUEST FOR SOLE SOURCE & RESTRICTED TENDERING (SSRT)

Members considered the 82 (Eighty-Two) Single Source (SS), Restricted Tendering (RT), supplementary applications and responses received to queries issued on earlier applications, as per the Summary Table attached. The CEO led the presentation of applications and gave technical clarifications to Members as required.

3.0. SSNIT APPLICATION FOR RATIFICATION

Members observed that this was a precarious situation. Though the contract of service had been done it was not a good contract. Members noted that the amount involved was now part of judgement debt and therefore granted permission for SSNIT to proceed and pay to avoid judgement debt pending investigations earlier authorized.

4.0. CONCLUSION

In the absence of any further business, the Chairman called for a motion to close the meeting. CEO moved for closure of the meeting and was seconded by Dr Emmanuel Boakye.

The meeting ended at 1:00 pm and was duly adjourned.

SIGNED:

.....

MR. SAMUEL NII BAIDOO (MR.)  
For: CHAIRPERSON  
BOARD TECHNICAL COMMITTEE

LESLEY DODOO (MRS.)  
BOARD SECRETARY

From the records, the Technical Committee of the PPA Board at its meeting No. 023 (023/2018) held on Friday, 15th March 2018, requested that GPHA provides satisfactory explanation as to discrepancy in cost. The GPHA responded with an explanation that the contract sum had been reduced to GH¢ 278, 981.02 because their in-house maintenance team carried out some works on the light house in response to an emergency situation for the celebration of the Homowo festival. The Committee did not meet again on this issue after the GPHA submitted the additional information requested for by the 23rd meeting of the Board Technical Committee, before the 15th May, 2018 letter by the 1st Respondent was issued.

In the said letter, the 1st Respondent communicated to the GPHA that:

“...At the Board Technical Committee Meeting No. 023 (023/2019) held on Friday, 15th March 2019, the Board decided that having upon submission of satisfactory information as requested by the Authority, PPA may proceed to convey to Ghana Ports and Harbours Authority.

We have reviewed the additional information submitted and find it satisfactory and in line with section 38 (b) of Act 663 as amended, we convey approval to Ghana Ports and Harbours Authority to use Restricted tendering Method to invite the underlisted companies to tender for the rehabilitation of James Town Lighthouse in Accra at an estimated cost of GHC400,000:

- i. GROVTEX VENTURES LIMITED
- ii. CANDUNS INTERNATIONAL LIMITED
- iii. TALENT DISCOVERY LIMITED
- iv. ABITJACK CONTRUCTION WORKS LTD...”

Summary Table: The request for the Lighthouse is recorded at 69. Application No.: RT/15/18, received: 10th December, 2018, GPHA Ref. DG/HQ/C.3/VOL.5/872 dated 29/11/18, on the Summary Table as follows:

69. Application No.: RT/15/12/18 Date Received: **10th DECEMBER, 2018**, Ref: DG/HQ/C.3/VOL.5/872 dated 29/11/18

<b>NAME OF ENTITY</b>	<b>GHANA PORTS AND HARBOURS AUTHORITY</b>	<b>REMARKS</b>
<b>TYPE OF PROCUREMENT (goods/works/services)</b>	<b>WORKS – REHABILITATION OF JAMES TOWN LIGHTHOUSE FACILITIES – ACCRA</b>	Decision of the Board communicated to GPHA vide Letter no. PPA/CEO/03/511 /19 of 25th March 2019
<b>STATUS</b>	NEW APPLICATION –RT	
<b>SOURCE OF FUNDS</b>	IGF	
<b>WARRANT</b>	N/A	
<b>SUMMARY OF APPLICATION</b>	GPHA is seeking approval from PPA to use the Restricted Tendering Method for the rehabilitation of James Town Lighthouse facilities Accra at an estimated cost of GHC 400.00.00. The following firms have been shortlisted to participate in the tendering process:	

	<p>1. GROVTEX VENTURES LIMITED</p> <p>2. CANDUNS INTERNATIONAL LTD</p> <p>3. TALENT DISCOVERY LIMITED</p> <p>4. ABITJACK CONSTRUCTION WORKS LTD</p>	
<b>JUSTIFICATION AND RELEVANT CLAUSE PROVIDED BY ENTITY</b>	-	
<b>CONSULTANT/ CONTRACTORS/ SUPPLIERS QUALIFICATION</b>	All shortlisted companies are registered in Ghana with valid statutory and other relevant documents	
<b>TECHNICAL CAPABILITIES</b>	Per the MWH classification provided, all the shortlisted companies possess the requisite expertise to undertake the rehabilitation works.	
<b>PRICE REASONABLE-NESS</b>	We observed from the BOQ submitted that the estimated cost for rehabilitating James Town Lighthouse is GHC278,981.02 and not GHC400,000 as stated in	

	GPHA's letter	
<b>CONCLUSION</b>	We recommend approval by the Board in accordance with section 38 (b) of Act 663 as amended at a contract sum of GHC278,981.02	
<b>BOARD DECISION</b>	Approval granted subject to satisfactory explanation of discrepancies in cost.	

The CEO of the PPA in a letter Ref. No. PPA/CEO/03/511/19, dated 25<sup>th</sup> March, 2019, wrote:

**“...RE: REQUEST FOR APPROVAL FOR RESTRICTED TENDERING PROCUREMENT OF WORKS AT PORT OF TEMA – REHABILITATION OF JAMES TOWN LIGHTHOUSE FACILITIES – ACCRA**

*We make reference to your letter No. DG/HQ/C.3/VOL.5/115 dated 11th February, 2019 in response to our letter No. PPA/CEO/01/58/19 dated 22nd January, 2019 on the abovementioned subject.*

*At the Board Technical Committee Meeting No. 23 (023/2018) held on Friday, 15th March 2019, the Board noted from the Bill of Quantities submitted that, the estimated cost for rehabilitating James Town Lighthouse is GHC 278,981.02 and not GHC400,000.00 as stated in your letter.*

*GPHA is therefore kindly requested to explain the discrepancy in the two Cost to enable the Authority process your request.*

*We count on your usual co-operation.*

*Signed*  
**AB ADJEI**

**CHIEF EXECUTIVE**

**TO: THE DIRECTOR GENERAL  
GHANA PORTS AND HARBOURS AUTHORITY**

**TEMA**

**ATTN: MR. MICHAEL A. LUGUJE “**

Response of GPHA to PPA letter No. PPA/CEO/03/511/19 of 25 March, 2019

*“...OUR REF: DG. HQ/C.3/V.7/276 12TH APRIL, 2019*

**THE CHIEF EXECUTIVE  
PUBLIC PROCUREMENT AUTHORITY  
PRIVATE MAIL BAG 30  
MINISTRIES –ACCRA**

*Dear Sir,*

**RE: REQUEST FOR APPROVAL FOR RESTRICTED TENDERING –  
PROCUREMENT OF WORKS AT PORT OF TEMA-  
REHABILITATION OF JAMES TOWN LIGHTHOUSE FACILITIES –  
ACCRA**

*Reference is made to your letter PPA/CEO/O3/511/19 dated 25th march 2019 seeking clarification in the amounts earlier submitted with respect to the above subject matter.*

*The initial amount of GHC 400,000.00 was lifted from our 2018 annual budget which was more of high projections of maintenance needs for the structure at that time against a more detailed assessment of the scope of work.*

*Moreover, our in-house maintenance team had to respond to an emergency situation for the celebration of the Homowo festival by carrying out some works on the lighthouse, hence the reduction in the scope and cost.*

*We hope our explanation should be able to address the discrepancy in the two costs to fast track our approval request.*

*Counting on your usual cooperation.*

*Yours faithfully,*

**For: GHANA PORTS & HARBOURS AUTHORITY**

*Signed*

**MICHAEL A. LUGUJE**

**DIRECTOR-GENERAL**

*CC: General Manager, Engineering, Headquarters*

*Ag. Procurement Manager, Headquarters*

Response from PPA:

*“...Our Ref. No. PPA/CEO/05/936/19 15 May, 2019*

**RE: REQUEST FOR APPROVAL FOR RESTRICTED TENDERING  
PROCUREMENT OF WORKS AT PORT OF TEMA –  
REHABILITATION OF JAMES TOWN  
LIGHTHOUSE FACILITIES –ACCRA**

*We make reference to your letter No. DG.HQ/C.3/V.7/276 dated 12th April, 2019 in response to our letter No. PPA/CEO/02/511/19 dated 25th March, 2019 on the above subject.*

*At the Board Technical Committee Meeting No. 23 (023/2019) held on Friday, 15th March 2019, the Board decided that, upon submission of satisfactory information as requested by the Authority, PPA may proceed to convey approval to Ghana Ports and Harbours Authority.*

*We have reviewed the additional information submitted and find it satisfactory. Accordingly, and in line with Section 38 (b) of Act 663 as amended, we convey approval to **Ghana Ports and Harbours Authority** to use Restricted Tendering Method to invite the underlisted companies to tender for the rehabilitation of James Town Lighthouse facilities in Accra at an estimated cost of **GHC400, 000.00**:*

1. GROVTEX VENTURES LIMITED
2. CANDUNS INTERNATIONAL LTD
3. TALENT DISCOVERY LIMITED
4. ABITJACK CONTRUCTION WORKS LTD

*Please ensure that the shortlisted companies are duly registered on the PPA Supplier database.*

*This approval is subject to submission of a copy of Evaluation Report, copy of Tender Document and Tenders submitted by Tenderers to PPA, prior to obtaining concurrent approval from the relevant Review Committee.*

*Please ensure that all documentation regarding this procurement is appropriately kept to facilitate future procurement and tax audits and also you are reminded to post the contract award notice on Public Procurement Website: [www.ppagana.org](http://www.ppagana.org).*

*We count on your usual cooperation.*

*Signed*

**AB ADJEI**

**CHIEF EXECUTIVE**

**PUBLIC PROCUREMENT AUTHORITY"**

**Reefer Container Terminal Equipment:** The GPHA applied for approval in its letter Ref. DG/HQ/C.3/VOL.5/875, dated 29th November 2018, to The Chief Executive Officer, PPA seeking

*"...authorisation to invite the under listed eligible contractors to tender for ... the Supply, Installation and Commissioning of an Automatic Power Factor Correction and Energy Demand Reduction Equipment at the Reefer Container Terminal at Tema Port (Equipment):*

- i. POWER WORLD LIMITED*
- ii. POWER FACTOR LIMITED*
- iii. KENPONG CONSTRUCTION LIMITED*
- iv. BA-ISENG ENTERPRISE LIMITED*

- v. TALENT DISCOVERY LIMITED
- vi. NEL SUPPLIES LIMITED”

The GPHA also attached the relevant documents for the contractors (listed above) for the perusal and action of the CEO (1<sup>st</sup> Respondent). On receipt of this request from the GPHA (as was being done to such requests), the 1<sup>st</sup> Respondent minuted on the letter to the chair of the DDU for action.

The 21st Meeting of the Board of 23rd January 2019 considered the following application:

*No. 36: Application No. SR/21/12/18, Date Received: 10<sup>TH</sup> December, 2018, Ref: DG/HQ/C.3/VOL.5/875 dated 29/11/18.*

Members present at this meeting included Mr. Adjenim Boateng Adjei CEO-member (1<sup>st</sup> Respondent). The Chairperson welcomed all to the first meeting of the year and wished members a happy new year. The meeting commenced after a short prayer by the CEO.

Members considered Minutes and Summary table of the 20th SSRT Meeting held on 13th December 2018 and in the absence of any errors or amendments, the Chairperson called for acceptance of the minutes as the true reflection of the day's proceedings. Dr. Boakye moved the motion to accept the minutes and was seconded by the CEO, Mr. A.B. Adjei.

It considered 76 single source (SS), restricted tendering (RT) applications and responses received to queries on earlier applications, as per a Summary Table attached.

Extract from the Table attached:

**Estimated Contract Cost – 350,000**

**Summary of Application:** *GPHA is seeking approval from PPA to use the Restricted Tendering Method for the Supply Installation and Commissioning of an Automatic Power Factor Correction and Energy Demand Reduction Equipment at the Reefer Container*

*Terminal at the Tema Port at an estimated cost of GH¢350,000. The following firms have been shortlisted to participate in the tendering process:*

- 1. Power World Limited*
- 2. Power Factor Limited*
- 3. Talent Discovery Limited*
- 4. Kenpong Construction Limited*
- 5. NEL Supplies Ltd*

**Justification and Relevant Clause Provided By Entity: Nil**

**Consultant/Contractor/Suppliers Technical Qualification:** All shortlisted companies are registered in Ghana and possess valid statutory documents

**Price Reasonableness:** The price is fairly reasonable

**Conclusion:** We recommend that the Board grants approval under section 38 (b) of Act 663 as amended to enable the GPHA to undertake the procurement activity.

**Decision:** Approved as recommended

The Mr. Adjei was present at the 21st Meeting of the PPA Board Technical Committee. The minutes show that the deliberations related to request for approval by GPHA for companies to tender under RT method. The shortlisted companies include TDL. Some of the documentation provided included the company's profile. TDL's profile which was presented at that meeting had the 1<sup>st</sup> Respondent's name as Director and Shareholder. The 1<sup>st</sup> Respondent did not recuse himself during the meeting.

The CEO of the PPA conveyed the decision of the Board in letter Ref. No. PPA/CEO/01/101/19, dated 24 January 2019 that

*"...At the Board Technical Committee Meeting No. 021 (021/2018) held on Monday, 23<sup>rd</sup> January 2019, the Board granted approval to Ghana Ports and Harbours Authority (GPHA)... to use Restricted tendering Method to invite the under listed companies to tender for the supply, **Installation and Commissioning of an Automatic Power Factor Correction and Energy Demand Reduction Equipment At the Reefer Container Terminal-Tema Port at a total estimated cost of GH¢350,000:***

- 1. Messrs. Power World Limited*
- 2. Messrs. Power Factor Limited*
- 3. Messrs. Talent Discovery Limited*

4. *Messrs. Kenpong Construction Limited*
5. *NEL Supplies Limited*
6. *Messrs. Ba-Iseng Enterprise Limited*

From the minutes of the Board Technical Committee Meeting No. 021 (021/2018), it is stated under “price reasonableness” thus:

*“...The price is slightly high. GPHA must be advised to revise the cost downwards by 15%. “Board Decision”-Approved as recommended with 10% discount as opposed to 15% discount.”*

TDL was among the companies shortlisted to participate in tendering processes for 1) Column Lift at GHC160,000; 2) the Supply Installation and Commissioning of 30 Meter High Mast Poles complete with Lantern Carriageway at the Tema Port at an estimated cost of GHC2,065,000, 3) the Supply, Installation and Commissioning of an Automatic Power Factor Correction and Energy Demand Reduction Equipment at the Reefer Container Terminal at the Tema Port at an estimated cost of GHC350,000.

### **Ministry of Education**

The Ministry of Education (MoE) in a letter to the Commission dated 16th October 2019, Ref. No. DA240/355/01 provided information/documents which indicate that the MoE shortlisted TDL for the award of contracts for the Construction of structures in selected Senior High Schools across the country using Restricted Tendering Method under its project “ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY”. The contracts for which TDL was shortlisted are:

- (i) a Single Storey Dormitory Block at Collins SHS, Agogo in the Asante Akim North District in the Ashanti Region;
- (ii) 1No. 12-Seater Toilet Block at the Tuobodom SHTS at the Techiman North District of in Bono East Region, and
- (iii) 1No. Two Storey Dormitory Block at Savelugu SHS, Northern Region

**Tuobodom and Collins SHS:** The Tuobodom and Collins SHS projects fell under an application by the MoE to the PPA requesting for approval to use restricted tendering method to procure contractors for the construction of structures in selected senior high schools across the country. It was contained in a letter signed by the Minister, Dr. Matthew Opoku Prempeh, Ref No. FA 101/331/01, dated 8<sup>th</sup> April, 2019. It is stated:

*“...The introduction of Free Senior High School Policy by the Government of Ghana has resulted in increased enrolment in Senior High Schools (SHS) across the country. This has resulted in the Ministry running a double track system to accommodate the increased enrolment. In view of this, the Ministry of Education has received funds from the Ghana Education Trust Fund (GETFund) under the Emergency Senior High Schools Project to construct structures in selected SHS to eliminate double track system for second year students in those schools in September 2019.*

*Given the short time at our disposal, the Ministry of Education, therefore wishes to seek the approval of the Public Procurement Authority under section 38 (b) of the Procurement Act, 2003 (663) as amended to use Restricted Tendering Method to select companies from the attached list of Contractors who have been assessed and found to have the capacity to construct the structures within the time schedule.*

*It is noted that this approach will enable the Ministry save time and cost in the examination and evaluation of large tenders.*

*Please find attached a table showing the name of school, structure type, estimated cost, proposed tenderers (extract presented below)... Also find attached are the Tenderers Business documents ...”*

S/No.	Name of Company	School/Community	Facility	Budget (GHC)
25	Talent Discovery Ltd	Collins SHS, Agogo	Dormitory	1,298,000.00
	Canduns International Ltd	Tuobodom SHS	12-Seater WC Toilet	160,000.00
	AbitJack Construction			

	Ltd			
--	-----	--	--	--

The MoE provided justification for the request to use RT/SS as “...Given the short time at our disposal, ...will enable the Ministry save time and cost in the examination and evaluation of large tenders...”

The 23rd Technical Committee Meeting held on Wednesday 15th March, 2019 (already summarized supra) at which the 1<sup>st</sup> Respondent was present, considered the application by the MoE.

Under new applications, the Chairman called the CEO to lead the briefing on the response received from entities on applications earlier queried or for which additional satisfactory documents and information were requested, which he did.

The application by the MoE is recorded on the Summary Table as “46. Application No.: RT/19, Date Received: 5th March, 2019, Re: FA101/331/01 dated 28/02/19.

Extracts of the Summary table:

***“Type of Procurement (goods/works/services):*** Works-Construction of Structures in Selected SHS across the Country

***Status:*** New Application (RT)

***Estimated Contract Cost:*** GHC42, 441,956.77

***Summary of Application:*** MOE is requesting for approval to adopt the Restricted Tendering procurement method in accordance with section 38 (b) of Act 663 as amended, to engage contractors for construction of various structures in selected Senior High Schools (SHSs) across the country.

***Justification and Relevant Clause Provided by Entity:*** The introduction of the Free Senior High School Policy by the government has resulted in increased enrolment in SHSs across the country. This has resulted in the Ministry running double track system to accommodate the increased enrolment. The Ministry has received funds from GETFund under the Emergency SHS Project to construct structures in selected SHSs to eliminate

*the double track system for second year students in those schools in September, 2019.*

*The Project has been grouped into twenty-five (25) lots with three (3) shortlisted construction companies for each lot.*

***Consultant/Contractor/Suppliers Qualification:*** *The shortlisted construction companies are registered in Ghana. Most of the statutory documents (SSNIT and Tax Clearance Certificates, and MW & H Certificates) provided expired and need to be renewed.*

***Technical Capabilities:*** *The shortlisted companies have the capability to execute the Project. However, we observed that the companies shortlisted for lot 24 (M/S Hallwort Ghana Ltd, M/S Regent House Ltd, and M/S Phenopia Ltd) have common shareholders or beneficiaries. It is therefore advisable that they are replaced to ensure proper competition in the tendering process.*

***Price Reasonableness:*** *We found the estimated cost for each lot to be reasonable.*

***Conclusion:*** *We recommend the Board grants approval to the request under section 38 (b) of Act 663 as amended. MOE should be advised to replace the shortlisted companies for lot 24 to enhance competition and also ensure that valid documents are obtained from each company during tendering.*

***Decision:*** *Approved as recommended”*

The CEO of the PPA (1<sup>st</sup> Respondent) wrote a letter ref. No. PPA/CEO/03/547/19 of 15th March, 2019 conveying the approval of the Board to the MoE, that:

*“...We make reference to your letter no. FA101/331/01 dated 28th February, 2019 on the above mentioned subject.*

*At the Board Technical Committee Meeting No. 23 (023/2018) held on Friday, 15th March 2019, the Board granted approval to the Ministry of Education in accordance with section 38 (b) of Act 663 as amended, to use*

*Restricted Tendering Method to invite the under listed companies to tender for the procurement of Contractors to undertake the construction of various structures in selected Senior High Schools (SHSs) across the country at a total estimated cost of GHS42, 441,956.77 as per the attached list.*

*MOE is however advised to replace the shortlisted companies for Lot 24 to enhance competition and ensure that valid documents are obtained from all the shortlisted firms during the tendering process.*

*You are also required to ensure that all shortlisted firms duly register on the PPA supplier database...”.*

**Savelugu SHS:** A request by the MoE to the PPA to use Restricted Tendering Method, in a letter dated 8th April 2019, which reads:

*“REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY*

*The introduction of the Free Senior High School Policy by the Government of Ghana has resulted in increased enrolment in Senior High Schools (SHS) across the country. This has resulted in the Ministry running a double track system to accommodate the increased enrolment.*

*The Ministry of Education has received funds from the Ghana Education Trust Fund (GETFund) under the Emergency Senior High School Project to construct additional structures in selected SHS in line with the elimination of the double track system by September 2019.*

*Given the short time at our disposal, the Ministry therefore wishes to seek approval of the Public Procurement Authority under section 38 (b) of the Public Procurement Act 2003 (663) as Amended to use the Restrictive Tendering Method to select companies from the attached list of contractors who have been assessed and found to have the **capacity** to construct the structures within the time schedule”.*

The Ministry’s letter contains a list of 104 LOTS, numbered RST 01-104 with the type of structure to be constructed, the location, name of school, names of the contractors it had shortlisted and the estimated cost.

At RST 55 is the Savelugu SHS contract where three companies were shortlisted by the MoE. The companies are: Canduns International Ltd, Talent Discovery Limited and ABITJACK Construction Limited.

On receipt of the MOE's request dated 8th April 2019, No. FA101/331/01, the CEO of the PPA in a letter dated 6 May 2019 (under the signature of the CEO), ref. No. PPA/CEO//05/842/19, titled "RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY" addressed to the Hon. Minister, Ministry of Education, Accra. ATTN: DR. MATTHEW OPOKU PREMPEH (MP), wrote:

*"At the Board Technical Committee Meeting no 25 (025/2019) held on Friday, 3<sup>rd</sup> May 2019, the Board decided that the Ministry of Education should furnish us with the cost breakdown for each LOT of the proposed structures to be constructed to facilitate the processing of your request..."*

The minutes of the Board Technical Committee Meeting no 25 (025/2019) held on Friday, 3<sup>rd</sup> May 2019 show that seven members of the Board including the Respondent were present. The rest were:

- i. Mrs. Ernestina Swatson Eshun - Chairperson
- ii. Mr. Samuel R. Nii Baidoo - Member
- iii. Hon. Godfred Dame - Member
- iv. Mrs. Stella Williams - Member
- v. Dr. Yaw Boakye - Member
- vi. Mr. Kofi Owusu - Member

The meeting commenced at 10:30am after a short prayer by the CEO.

The Chairperson, Ernestina Eshun, welcomed all to the 25th Board Technical Committee meeting. She welcomed the two additional Board Members to the meeting, which is now a full Board meeting as directed by the Board Chairman and no longer the Board Technical Sub-Committee.

It confirmed the Minutes and RT/SS Table of the 24th RT/SS Meeting held on Wednesday 5th April, 2019, on the motion of Dr. Emmanuel Boakye, which was seconded by the CEO (1<sup>st</sup> Respondent).

The Chairman called on the CEO to lead the briefing on the responses received from Entities on application earlier queried or for which additional documents and information had been requested. The CEO took members through the responses and the recommendations on same as well as the steps taken by Management in light of the responses.

Members considered 61 Single Source (SS), Restricted Tendering (RT), supplementary applications and responses received to queries issued on earlier applications, as per a summary table attached.

The CEO led the presentation of applications and gave technical clarifications to Members as required. The Board requested management to communicate the decisions taken to the various applicant entities.

In the absence of any further business, the CEO, Mr. A.B. Adjei, moved for closure of the meeting and was seconded by Mr. Kofi Owusu.

This request by the MOE is recorded in the Summary Table as "...26. *Application No.: SS/04/19 Date Received: 11/04/19, Re: FA101/331/01 dated 8/04/19*"

Extract of the Summary of Table:

**Type of Procurement (goods/works/services):** Works-Construction of Additional Structures in Selected SHSs across the Country

**Status:** New Application (RT)

**Estimated Contract Cost:** GH¢191,632,350.00

**Summary of Application:** MOE is requesting for approval to adopt the Restricted Tendering procurement method in accordance with section 38 (b) of Act 663 as amended, to engage contractors for construction of various structures in selected Senior High Schools (SHSs) across the country as part of the process of eliminating the double track system by September, 2019. The project has been divided into 104 lots with three (3) construction companies shortlisted for each lot.

**Justification and Relevant Clause Provided by Entity:** The introduction of the Free Senior High School Policy by the government has resulted in increased enrolment in SHSs across the country. This has resulted in the Ministry running double track system to accommodate the increased enrolment. The Ministry has received funds from GETFund under the Emergency SHS Project to construct additional structures in selected SHSs in line with elimination of the double track system.

Given the short time at the Ministry's disposal, it is imperative to adopt the Restricted Tendering process to select companies found to have the capacity to construct the structures within the time schedule.

**Consultant/Contractor/Suppliers Qualification:** All the shortlisted construction companies are registered in Ghana. However, the Works and Housing classification for most has expired.

**Technical Capabilities:** We identified that some of the companies shortlisted for some lots seem to have the same ownership: 55. Canduns International Ltd, and Talent Discovery Limited-Have same address and were competing in same lot (lot55). Same Ownership.

**Price Reasonableness:** We found the estimated cost to be reasonable. However, some of the projects have also been stated in the Ashanti Regional Coordinating Council's request for approval. The two

Agencies need to be advised to liaise with each other and sort out the project to avoid duplication of projects and or payments.

**Conclusion:** MOE should be advised to:

- Replace the companies identified/suspected to have the same ownership and are competing in the same lots to enhance competition.
- Liaise effectively with the Ashanti Regional Coordinating Council in the execution of some of the projects in the region to prevent duplication of projects at the expense of other schools in other parts of the country.

**Board Decision:** Approval granted subject to Management's recommendation above.

On 8th May 2019, the CEO of the PPA, in a letter to the Hon Minister, Ministry of Education, ref. No. PPA/CEO/05/842/19, with the heading “RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY, stated:

*“We make reference to your letter No. FA 101/331/01 dated 8<sup>th</sup> April 2019 on the above subject.*

*At the Board Technical Committee Meeting no 25 (025/2019) held on Friday, 3<sup>rd</sup> May 2019, the Board noted the content of your letter. However, the Board observed that, some of the shortlisted companies seem to have the same ownership as tabled below..”, among others:*

<b>Lot No.</b>	<b>Companies Involved</b>	<b>Issues identified</b>	<b>Our Suspicion</b>
55	<ul style="list-style-type: none"> <li>• Canduns International Ltd, and</li> <li>• Talent Discovery Ltd</li> </ul>	They have the same address and are competing in the same Lot (no. 55)	Same Ownership

*“This letter supersedes our letter No. PPA/CEO/05/842/19 dated 6th May 2019 on the subject above.*

*MOE is therefore advised to replace the companies identified/suspected to have the same ownership and are competing in the same Lot to enhance competition...”*

By letter to the Chief Executive of PPA, dated 14 May 2019, ref. no. FA101/331/01, titled “RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY”, the MOE writes:

*“...We make reference to your letter No. PPA/CEO/05/842/19 dated 8th May 2019 requesting the Ministry to replace companies identified/suspected to have same ownership and are competing in the same Lot.*

*“In response to your request, the Ministry has replaced the identified/suspected companies with different companies to enhance competition.”*

*Please find attached a list of the companies and their statutory documents...”*

*List:*

<i>Lot</i>	<i>MMDA</i>	<i>Structure</i>	<i>Name of School</i>	<i>Company Name</i>	<i>Estimated Cost</i>
55	Savelugu-Nanton	2-Storey Dormitory Block	Savelugu Senior High School	Prolus Investments Limited Doemens Limited Talent Discovery	2,600,000

The companies listed in the 8th April letter as suspected as having same ownership in respect of LOT 55 are CANDUNS International Limited and

Talent Discovery Limited. The PPA Board directed that the two companies be replaced.

The CEO's letter, dated 24th May 2019, ref. No. PPA/CEO/05/1082/19, conveying the decision of the Board under the heading, “RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY”, is as follows:

*“We make reference to your letter No. FA 101/331/01 dated 14<sup>th</sup> May 2019 in response to our letter No. PPA/CEO/05/842/19 dated 8<sup>th</sup> May 20-19 on the above subject At the Board Technical Committee Meeting no 25 (025/2019) held on Friday, 3<sup>rd</sup> May 2019, the Board decided that, upon submission of satisfactory information as requested by the Authority, PPA may proceed to convey approval to the Ministry of Education...to use restricted Tendering Method to invite the underlisted companies in 104 LOTS to undertake the construction of various structures in selected Senior High Schools across the country.....as per the attached list”.*

Per the attached PPA approved list:

<b>Lot</b>	<b>MMDA</b>	<b>Structure</b>	<b>Name of School</b>	<b>Company Name</b>	<b>Estimated Cost</b>
55	Savelugu-Nanton	2-Storey Dormitory Block	Savelugu Senior High School	Prolus Investments Limited Doemens Limited Talent Discovery	2,600,000

TDL Tender Form to the MoE in respect of the Emergency Senior High School Project for the Construction of 1No. Single Storey Dormitory Block at Collins SHS in the Asante Akim North District & 1No. 12-Seater Toilet Block at the Tuobodom SHTS in the Techiman North District with Contract Lot: EMRG/RT/AS10 and IFT No: MOE/FPMU/RT/WKS/001/2019 is dated 17th April 2019.

Then, the MoE, in a letter No. MOE/PFMU/EMRG/AS10 dated 5th July 2019, notified TDL of the award of the contract to TDL (Notification of Award), following which the contract between the MoE and TDL was signed on 22nd July, 2019.

In a letter to the Commission dated 3rd February 2021 in response to the Commission's letter Ref: No. CHRAJ/297/2019/27, the MOE confirmed that following the signing of the contracts, an Interim Payment Certificate No. 1 was raised by the contractor for payment at the value of Three Hundred and Forty Thousand, Seven Hundred and Sixty-Nine Cedis and Twenty-one pesewas (340,769.20)

At the same 25<sup>th</sup> Board Meeting, a request by the MOE to procure pick up vehicles from Kantanka Automobile Ltd through single source (SS) procurement was also considered. This appears on the Extract from the Summary table as follows:

**Application No. SS/14/04/19: Date Received-11/04/19**

**Ref: FA101/331/01 dated: 10/04/2019**

**Name of Entity:** Ministry of Education

**Type of Procurement:** Goods – Procurement of Kantanka Pick Up Vehicles

**Status:** New Application (SS)

**Estimated Contract Cost:** GH¢27,000,000.00

**Summary of Application:** MOE is requesting for Single Source approval under Section 40(1)(a) of Act 663 as amended to procure 160 Kantanka Pick Up vehicles from Kantanka Automobile Company Ltd for its departments, agencies and schools at the total cost of GH¢27,000,000.00

**Justification and Relevant Clause Provided by Entity:** The Company is a reputable domestic automobile assembly company

**Consultant/Contractor/Suppliers Qualification:** Kantanka Automobile Company Ltd is duly registered under the laws of Ghana.

**Technical Capabilities:** The supplier has the potential and capacity to supply the vehicles

**Price Reasonableness:** Our analysis and other economic considerations showed that the cost is very reasonable and will achieve value for money besides the promotion of local industries

**Conclusion:** We recommend that the Board grants approval under s, 40 (1) (d) of Act 663 as amended

**Board Decision:** Approved as recommended

In a letter dated 3<sup>rd</sup> February 2021 in response to the Commission's letter Ref: No. CHRAJ/297/2019/27 requesting for information on the procurement of Kantanka Pickup vehicles, the MOE confirmed that on 28<sup>th</sup> May 2019 it signed a contract with Messrs Kantanka Automobile Company Ltd to supply 160 Pick Up Vehicles but Kantanka Automobile Company Ltd wrote to the MOE on 17 December 2019 indicating its inability to deliver the vehicles for reasons of Force Majeure. The contract was therefore terminated, and no vehicle was supplied.

## ANALYSIS OF EVIDENCE AND CONSIDERATION OF ISSUES

- 1) Whether Mr. Adjenim Boateng Adjei and the other Board Members put themselves in a positions where their personal interest conflicted or were likely to conflict with the performance of the functions of their office.**

The complainant alleges that:

*“Adjenim Boateng Adjei and the other Members of the Board of the PPA have allegedly been involved in corruption, conflict of interest, collusion and inappropriate conduct in violation of the Constitution and laws of Ghana for which appropriate sanctions should be applied”.*

Article 284 provides that:

**“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.”**

The Guidelines on Conflict of Interest define conflict of interest as:

*“a situation where a public officer’s personal interest conflicts with or is likely to conflict with the functions of his/her office.”*

The Organisation for Economic Co-operation and Development (OECD) has defined conflict of interest in the public sector as:

*“a conflict between the public duties and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.”*

Black’s Law Dictionary (9th ed.) also defines conflict of interest as:

*“a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties”.*

“Private interest” is defined in the Guidelines to include:

*A financial or other interests of the public officer and those of:*

- i. Family members, relatives*
- ii. Personal friends*
- iii. Clubs and associations*
- iv. Persons to whom the public officer owes a favour or is obligated*

### **Mr. Adjenim Boateng Adjei**

On the issue of Conflict of interest in respect of Mr A. B. Adjei, the Commission has already conducted investigation into allegation and made findings of fact in the case of OOP v. CEO PPA that he put himself in the position where his personal conflicted with the performance of the

functions of his office. In that case the Commission found as a fact that Mr. Adjei “had put himself in a position where his personal interest (financial and relational) conflicted with the performance of the functions of his office as CEO and Board Member of PPA”.

We find the same allegation and same evidence in this case. In the absence of any fresh evidence, the Commission makes the same findings of fact as in the OOP v. CEO PPA case.

**Dr. Emmanuel Yaw Boakye:**

Dr. Emmanuel Yaw Boakye was a Technical Director at the then Office of the Minister for Procurement, and member of the PPA Board at the material time.

The evidence shows Dr. Boakye was a Deputy General Secretary of Kristo Asafo Church for over 20 years, and a Board Member of the Kristo Asafo Schools. These organisations and Kantanka Automobile Ltd are part of the Kristo Asafo Group of Companies.

The evidence further shows that the founder of the Kristo Asafo Group of Companies, Apostle Kwadwo Safo Kantanka, took care of Dr. Boakye, and, according to Dr. Boakye, he considers Apostle Kwadwo Safo as his father and Appostle Kwadwo Safo’s children as his siblings. Thus, it is reasonable to infer that Dr. Boakye has either direct or indirect relationships with Apostle Kwadwo Safo and Kristo Asafo Group of Companies.

As noted earlier, Kantanka Automobile Ltd was awarded a contract to supply Pick up vehicles to the Ministry of Education through single source procurement. Dr. Boakye admitted that he participated in the 25<sup>th</sup> Meeting of the Board Technical Committee held in 2019 at which meeting the Board discussed and approved the request made to the PPA Board by the MoE for approval to use single source procurement to engage Kantanka Automobile Ltd to supply 160 Kantanka pickup vehicles. He did not disclose his

relationship with the Company at the meeting, neither did he recuse himself from the meeting.

On why he did not recuse himself from the 25<sup>th</sup> Meeting of the Board Technical Committee held in 2019 that approved the request made to the PPA Board by the MoE to use single source procurement to engage Kantanka Automobile Ltd to supply 160 Kantanka pickup vehicles, he said in part, *“the fact that the founder of Kristo Asafo Group of Companies had helped him before or took care of him, does not totally amount to having a relationship with him”*. He also said that he has no interest in the companies, and was not a Board Member of the said company. More so, he did not influence the decision of the Board. He further argued that there is no evidence to show that somebody was going to make money out of it. Moreover, the companies now belong to one of the founder's son.

The explanation offered by Dr. Boakye for participating in the deliberations of the 25<sup>th</sup> Meeting that considered the application involving Kantanka Automobile Ltd does not address the conflict of interest allegations against him.

As noted earlier, Rule 3.1 of the Conflict of Interest Guidelines relating to Conflicting Financial Interest provides that:

*“A public official shall not participate in an official capacity in any particular matter which to his knowledge:*

- i. he/she has a financial interest; and*
- ii. any person whose interests are imputed to him in any way has a financial interest if the particular matter will have a direct effect on that interest”.*

Dr. Boakye’s relationship with Apostle Kwadwo Safo and his children, and the Kristo Asafo Group of Companies, whether direct or indirect, are significant enough, and that should have put him on notice that he is not permitted to participate in an official capacity in the decision of the PPA

Board that involved the interest of Kantanka Automobile Ltd. In effect, he participated in an official capacity in a matter which to his knowledge persons whose interests are imputed to him in any way have a financial interest if the particular matter will have a direct effect on that interest, and it does not matter whether he personally influenced or his presence influenced the award of the contract to Kantanka Automobile.

It is regrettable that Dr. Boakye, being a Board member of the PPA, could not appreciate that by attending and participating in the deliberations of the 25<sup>th</sup> Meeting that considered the application involving Kantanka Automobile Ltd, he had put himself in a position where his personal interest conflicted with the performance of the functions of his office as Board Member of PPA. Simply put, he had a duty to disclose his relationship with the said company at the meeting and recuse himself. The Commission does not find his explanation tenable under the circumstance.

On the basis of the evidence before it, the Commission finds as a fact that Dr. Emmanuel Yaw Boakye put himself in a position where his personal interest (relational) conflicted with the performance of the functions of his office as Board Member of PPA.

The Commission did not find any evidence to support the allegation of conflict of interest against the Chairman and the remaining Members of the Board.

## **2. Whether Adjenim Boateng Adjei (1<sup>st</sup> Respondent) improperly used or abused his office as CEO of PPA.**

As noted above, the complainant alleged that:

*“Adjenim Boateng Adjei and the other Members of the Board of the PPA have allegedly been involved in corruption, conflict of interest, collusion and inappropriate conduct in violation of the Constitution and laws of Ghana for which appropriate sanctions should be applied”.*

Among others, the Complainant alleged that Mr. Adjenim Boateng Adjei abused his office as CEO and Board Member of PPA for personal gain.

On the issue of abuse of office in respect of Mr A. B. Adjei, the Commission has again conducted investigation into allegation of improper use or abuse of office as the CEO of PPA and made findings of facts in the case of OOP v. CEO of PPA that on at least two occasions Mr. Adjei used his office as CEO of PPA improperly to alter the decision of the Board of PPA to benefit TDL, a company in which he has personal (financial and relational) interest. The Commission finds as a fact in the instant case, in the absence of fresh evidence to the contrary, that Mr. Adjei used his office improperly to the benefit of TDL, a company in which he has personal (financial and relational) interest.

**3. Whether the PPA Board colluded with the first Respondent in issue (2) above as alleged.**

The complainant alleged that *“the conduct of Adjenim Boateng Adjei could not have occurred without the collusion of and inappropriate conduct by the Board of the PPA, for which reason the actions of the other members of the Board should also be investigated and those found culpable should be sanctioned including recovery of money or assets that any Board member might have acquired through the collusion and inappropriate conduct”*.

The PPA Board through its Chairman denied the allegation and described it as unfounded and speculative.

The Board stated, inter alia:

*It is noted that the allegations contained in your letter are levelled against the PPA Board. With the exception of Mr. A.B Adjei, no allegation of conflict of interest, corruption or collusion is made against any person serving on the PPA Board...*

*...no particulars of alleged collusion and inappropriate conduct by the Board were given in either the complaint by GII or your letter.*

*It is pertinent to assert, respectfully, that the PPA Board is neither vicariously responsible for acts allegedly committed by Mr. A.B Adjei, nor vicariously liable for allegations of conflict of interest, corruption or other inappropriate conduct levelled against Mr. A.B Adjei.*

The Commission agrees with the Board that it cannot reasonably be expected to be vicariously liable for the acts of its members and CEO of the PPA. On the other hand, the Commission did not find any evidence in support of the allegation of collusion, conflict of interests or other inappropriate conduct against the Board.

However, the Commission noted that the Board did not ensure compliance of its own resolution on the recusal of the CEO any time the company TDL was involved in any application before the Board. Although this is not evidence of collusion, conflict of interest, or inappropriate conduct, the Commission is of the view that the Board could have prevented or reduced the opportunity for the CEO to take improper advantage of his office in respect of TDL if the Board had enforced compliance with its resolution.

Section 38 of Act 663 (as amended) provides as follows:

**(1) A procurement entity may for reasons of economy and efficiency and subject to the approval of the Board engage in procurement by means of restricted tendering**

**(a) if by reason of the highly complex and specialised nature goods, works or services are available only from a limited number of suppliers or contractor; or**

**(b) if the time and the cost required to examine and evaluate a large number of tenders is disproportionate to the value of goods, works or services to be procured.**

**(c) if an offer for competitive tendering fails to receive any response after publication.**

The Commission also notes that the Board did not enforce the provisions regarding the requirement for justification to be given for the grant of approval for applications for restricted tendering. The Commission noted from the applications that were reviewed in the course of this investigation that apart from MOE, which gave justification for its applications for restricted tender to the PPA, seldom did any other procurement entity give the requisite justification for the grant of approval for their applications for restricted tendering.

Section 86 of Act 663 as amended provides that:

**“(1) The Board shall, with the approval of the Minister, compile and publish a code of conduct that shall apply to each official of a procurement entity, the members of an evaluation panel, members of a tender review committee, members of the Board as well as tenderers, suppliers, contractors and consultants.**

**(2) The code of conduct shall address:**

- (a) conflicts of interest in procurement;**
- (b) measures to regulate matters concerning personnel responsible for procurement;**
- (c) declarations of interest in particular procurements;**
- (d) screening procedures and training requirements; and**
- (e) any other matter related to the ethics of procurement.**

**(5) The code of conduct shall promptly be made accessible to the public and shall be updated regularly as directed by the Board.**

The Commission notes that the PPA Board has not complied with the mandatory requirement to compile and publish the code of conduct which must guide all procurement entities, the members of an evaluation panel,

members of a tender review committee, members of the Board as well as tenderers, suppliers, contractors and consultants.

It is the considered view of the Commission that the non-enforcement of its resolution or the provision on justification in the said restricted tender applications, and the failure to issue the code of conduct by the Board amount to lapse in procedure and does not necessarily meet the threshold of collusion, conflict of interest, or inappropriate conduct on the part of the Board.

Nevertheless, the Commission will make recommendations with regard to these observations.

#### **4. Whether Mr. AB Adjei and the other Members of the Board of the PPA contravened Article 286 of the Constitution**

The Complainant also alleged that Mr. Adjenim Boateng Adjei and the other Board Members of the PPA had contravened article 286 of the 1992 Constitution.

Article 286 of the Constitution provides:

**“(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”.**

Clause (5) of Article 286 of the Constitution provides:

**“The public offices to which the provisions of this article apply are those of –**

**“... (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”.**

Section 3 of Public Office Holders (Assets Declaration and Disqualification) Act, 1998 (Act 550), in Schedule 1, provides a list of Public Offices subject to this Act and Article 286 of the Constitution:

*“z) Persons who are:*

*i) Heads of;*

*ii) Accountants in;*

*iii) Internal Auditors in;*

*iv) Procurement Officers in; and*

*v) Planning and Budget officer in finance and procurement departments of government ministries, departments and agencies, District, Municipal and Metropolitan Assemblies:*

*a) 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”.*

Article 288 of the Constitution provides that:

**In this Chapter [24], unless the context otherwise requires, "public officer" means a person who holds a public office.**

Article 295 (1) provides:

**In this Constitution, unless the context otherwise requires- “public office" includes an office the emoluments attached to which are paid directly from the consolidated Fund or directly out of moneys provided by Parliament and an office in a public corporation**

**established entirely out of public funds or moneys provided by Parliament.**

Thus, persons who are public officers listed under the Constitution and Act 550 are those required to declare their assets. They include public officers whose salary is equivalent to or above the salary of a Director in the Civil Service.

Article 287 which is on contravention or non-compliance of Chapter 24 of the Constitution, provides:

**“(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 for Human and 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.”**

Section 8 of Act 550, which mirrors article 287, also provides:

**“(1) An allegation that a public officer has contravened or has not complied with a provision of Part 1 of this Act shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner for 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 for Human Rights and Administrative Justice or the Chief Justice may take such action as he considers**

**appropriate in respect of the results of the investigation or the admission.”**

Pursuant to Article 287 (1) of the Constitution and Section 8 of Act 550, the Commission, in letters dated 6<sup>th</sup> January, 2020 and August 2020, requested written comments from Mr. Adjenim Boateng Adjei and Board Members of the PPA namely, Professor Douglas Boateng (Board Chair), Mr. Samuel R. Nii Baidoo, Hon. Godfred Yeboah Dame, Mrs. Ernestina Swatson Eshun, Mrs. Stella D. Williams, Dr. Emmanuel Yaw Boakye, and Mr. Dave Kofi Owusu, as well as Madam Patricia Safo, and Mrs. Wilhelmina Bampoe.

The Respondents submitted written comments on the allegation to the Commission.

Mr. Adjei, in his comments dated 10<sup>th</sup> March, 2020, admitted to the non-compliance with Article 286(1) on written declaration of assets and liabilities, and that the matter was brought to his attention together with other members of the Board and staff of the PPA in an audit report issued by the Office of the Auditor-General. He disclosed that in his response to the Auditor-General’s findings, he acknowledged that he had not declared his assets as required by law and noted his preparedness to do so. He said that not long after, he was suspended by the President of the Republic following the allegations made against him. He said he is not averse to the act of declaring his assets as a public officer and he will take steps to do so forthwith.

Professor Boateng, Board Chairman, in his comments dated 9<sup>th</sup> October 2020, admitted to the non-compliance of Article 286(1) on written declaration of assets and liabilities, stating that:

*“... now in the process of complying with the provisions of article 286 of the Constitution and section 3 of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) by filing a declaration of assets form with the Auditor-General. The failure to do so earlier was*

*inadvertent and out of mistaken view of the relevant laws that pertains to my purely citizenry supervisory non-executive chairmanship role coupled with the COVID-19 disruption to especially international travel”.*

The Board of the PPA was constituted in September 2017 and the chairman was required to declare his assets before assuming office or not later than 6 months after assuming office. Reference to the COVID-19, which started late 2019 and became a real issue from 2020, would not be relevant excuse to this case. In short, Prof. Boateng failed to comply with Article 286 of the Constitution and Act 550, although he indicated that he was now taking steps to do so.

Mrs. Williams, in her comments dated 17th August, 2020, stated that she had complied with article 286 by filing her declaration form with the Auditor-General on 9<sup>th</sup> January 2020.

Hon. Godfred Dame, in his comments dated 17th August, 2020, indicated that:

*“...all records relating to my compliance or non-compliance with the provisions of article 286 of the Constitution and the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) are in the custody of the Auditor-General, the public officer assigned by the Constitution to be a keeper of such records.”*

However, Mrs. Eshun, Mr. Baidoo, Dr. Boakye and Mr. Owusu responded that membership of the Board of the Public Procurement Authority (PPA) is not an office to which Article 286 and Act 550 applies.

Indeed, a careful examination of Article 286 and Section 3, Schedule 1 of Act 550, shows that members of the PPA Board qua membership of the Board (except the Chairman and CEO) are not among the list of public officers required to file declaration of assets and liabilities with the Auditor-General. Accordingly, the members, qua members, were not under any

obligation to declare their assets and liabilities as provided for under article 286 of the Constitution.

On the basis of the foregoing, and on their own admission, the Commission finds that Mr. Adjenim Boateng and Professor Douglas Boateng contravened Article 286 (1)(a) of the 1992 Constitution and Section 1(4)(a) of Act 550.

5. **Whether Mr. Adjei acquired property or assets between the periods April 2017 and October 2019 when he was holding public office which were not reasonably attributable to income, gift, loan, inheritance or any other reasonable source.**

Article 286(4) of the Constitution provides that:

**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.**

Section 5 of Act 550 also provides as follows:

**In accordance with clause (4) of article 286 of the Constitution, the property or the assets required under section 1 to be declared, and which is or are acquired by a public officer after the initial declaration and which is or are not reasonably attributable to income, gift, loan, inheritance or any other reasonable source shall be regarded as acquired illegally and in contravention of the Constitution.**

The complainant alleged that:

*Mr. Adjenim Boateng Adjei enriched himself illegally and placed himself in contravention of Article 286 of the 1992 Constitution and his actions should be investigated, he should be sanctioned, and the illegal assets he acquired should be confiscated to the State.*

Put another way, the complainant is alleging that Mr. Adjei illegally enriched himself through the instrumentality of his public office position as CEO of PPA, for which it wanted Mr. Adjei investigated, sanctioned and any proceeds of the alleged illicit enrichment so found confiscated to the State.

In response to the said allegation, Mr. Adjei, in his written comments to the Commission dated 10<sup>th</sup> March 2020, described the allegation as baseless. According to him, the allegation could only be considered if the Complainant was able to show that any contract was subletted, subcontracted or sold and for how much. He said that the Complainant had failed to show that any contract was subletted, subcontracted or sold and so the issue of whether 1<sup>st</sup> respondent has enriched himself or not does not arise.

He claimed that from the inception of the company up to date, he has not taken any active part in the running of the affairs of the company and **has also not received any financial benefit from the company in any shape or form, be it by way of salary, allowance, or dividends**. He invited the Complainant to prove the following:

- a. Any pecuniary benefit which TDL has bestowed on 1<sup>st</sup> respondent.
- b. Any such pecuniary benefit obtained and conferred on TDL through the abuse of office by 1<sup>st</sup> respondent.
- c. The quantum of the unlawful enrichment of 1<sup>st</sup> respondent which he had obtained through TDL flowing from the abuse of his office.

As can be seen above, records received from the FIC of the bank accounts of the Respondent show that the Respondent opened USD Account Number

9040002473180 at the Stanbic Bank on 03 April 2017, after his appointment as CEO of PPA. As of 28 August 2019, **a total amount of USD 516,225 had been credited to the account**, and his debits stood at USD 504,607.87. His Euro Account at the same bank also had **EU54,500.00** credited and EU37,333 debited for the same period.

In respect of his Cedi Account No. 9040002313337 at the Stanbic Bank, opened on 21 January 2017, **a total of 3.83 million Cedis was credited**, and 3.81 million Cedis debited, to the account between the date of his appointment as CEO in 2017 and 29 August 2019.

The records further show that his UMB USD Account No. "428872" had seen cash flow of over **USD110,000** between December 2018 and March 2019 alone, whilst total cash deposits into his Cedi account at UMB alone between August 2017 and August 2019 amounted to **GHS 5,697,530.00**.

**In sum, between his two Ghana Cedi accounts at Stanbic and UMB, a total of over 9.5 million Ghana Cedis passed through Mr. Adjei's hands for the two and half years he was in office, whilst a total of USD626,225 passed through his two USD accounts at Stanbic and UMB, and EU54,500.00 passed through the Stanbic Euro account.**

Even though the Respondent is a director of over 19 companies, he himself claims that he did not receive director's fees from any of those companies except Beachfront Stevedoring Company Limited.

In the meeting on 26<sup>th</sup> January 2021 Mr. Adjei had this to say:

*"...I told the people I drove to PPA when I was given the appointment in my brand-new Range Rover. I was somebody who was not just there sitting to wait for an appointment to start life. And this is something that pains me so much because of over 38 years over my life this was only three years and what I was more hurt when my account was published and people didn't seek to know the **background was that over the years I had acquired assets,***

*I have investments, so if I come to office and I am facing this challenge, like this salary and I decide to you know to recapitalise my assets, you know I have land that value three (3) million dollars and all that which I have acquired 14, 15 years ago. So if I decided to do that and I get revenue coming in bits and I re-invest them so could I get other monies. This is not out of place, but because I didn't have the opportunity to give more detailed account of what my accounts look like, look at the way the public would see. In the nutshell, chairman what I am trying to say is that I did not start my life with PPA in this last three years".*

Once again Mr. Adjei appears to have misconceived the real issue here. No one is questioning the magnitude of his wealth or what he was worth before he assumed public office in 2017. The allegations are in respect of illicit enrichment after his appointment as CEO of PPA and unexplained wealth that passed through his foreign and Cedi accounts at Stanbic and UMB banks. Thus, his explanation that he had accumulated wealth prior to his appointment at PPA, does not provide any answers to the issue in question.

In the course of the investigation, the Commission gave opportunity to Mr. Adjei to explain the sources of the numerous large cash deposits into his UMB Cedi account, including a formal letter written to him on the matter. Responding to the Commission's request, Mr. Adjei wrote through his lawyers in a letter dated 29<sup>th</sup> March 2021 that:

- a. *...there was a meeting between himself and the Commission on 26<sup>th</sup> January, 2021 but denies the assertion that at the said meeting he informed investigators that monies deposited into his Universal Merchant Bank (UMB) Cedi account were from investments he made. For the avoidance of doubt, the said meeting only discussed whether our client received salary in the course of his employment, the reason for the deposit made into his account by a car dealership company and certain issues pertaining to board allowances. The sources of money deposited into his UMB account or any other account for that matter was never discussed.*

b. *In addition, our client contends that even if the said statement was made at the said meeting, he does not consider himself obliged to respond to the inquiry being made by the Commission on the basis that there is no complaint against him regarding his personal account as a public officer. The complaints in this matter bother and concern the allegations that our client established companies as a public officer and used his office to award contracts to his companies, sold those contracts and enriched himself thereby.*

*In our humble view, the duty of the Commission in relation to the complaint is basically to determine whether our client abused his office to procure contracts in order to sell same and enrich himself and our client would be willing, as he has done in the past, to provide information regarding the complaint but would not participate in any form of inquiry not borne out by the complaint.*

c. *We also wish to bring to your attention that a related matter in the Commission's report dated 27<sup>th</sup> day of October 2020, in the matter of the Office of the President as complainant and our client as he Respondent, your office had made conclusions on the inquiry which you now seek to make. On pages 164 and 187, the Commission noted that it had obtained information from the FIC on our client's bank accounts and when our client was confronted with the said accounts (which is denied), he could not explain "the source of large volumes of excess wealth that passed through his bank accounts between March 2017 and August, 2019". It is therefore our position that having concluded in the said official report that our client had failed to explain the source of money in his accounts, the present request is superfluous even if our client felt it was within the scope of the complaint before the Commission."*

Again, we find that Mr. Adjei has misled himself on the issues under investigation. To start with, one of the allegations made against Mr. Adjei is that:

***Adjenim Boateng Adjei enriched himself illegally and placed himself in contravention of Article 286 of the 1992 Constitution and his***

*actions should be investigated, he should be sanctioned, and the illegal assets he acquired should be confiscated to the State.*

Among others, the Complainant prayed that:

*In order not to allow those persons benefit from the illegal wealth they may have acquired through corruption, investigations should be conducted and the illegal wealth retrieved for the State.*

Therefore, it is within the remit of this investigation to inquire into how Mr. Adjei came by those large amounts of cash lodged into his accounts, especially when he had stated himself that he was not receiving salary or income from any of the known sources. He had also admitted that he had not declared his assets and liabilities to enable the Commission determine what he was worth before assuming public office.

Further, Mr. Adjei misconceived the intendment of the request when he stated that the Commission had already concluded that he could not explain the sources of the money in his various accounts in a previous investigation. The previous investigation under reference (OOP V CEO of PPA) did not inquire into his UMB Cedi account, which information the Commission obtained from the FIC only in February 2021 in the course of this particular investigation. Therefore, the Commission could not have stated that Mr. Adjei could not explain the sources of the cash lodged into his UMB Cedi account in the case under reference.

As an independent constitutional investigative body, the Commission has, and will, always give all persons, especially persons against whom allegations are made, all the opportunity under the law to fully participate in its investigations and to put across their defense. However, where persons fail or refuse to use the opportunity given, the Commission can not compel them to do otherwise.

The Commission finds Mr. Adjei's response completely unsatisfactory and unresponsive to the allegation of illicit enrichment or illegal wealth. Mr. Adjei's circumlocutory responses did not offer any explanation to the sources of the large volumes of wealth that passed through his UMB Cedi account between August 2017 and August 2019, except the explanation given for the deposit in two installments of GH¢43,000.00 each (totaling GH¢86,000.00) into the said account in November 2017 by Device Ltd.

In the face of the compelling evidence, the Commission finds as a fact that the total cash deposits into Mr. Adjei's Cedi account at UMB between August 2017 and August 2019 amounting to **GHS 5,697,530.00**, less the GHS86,000.00 paid by Device Ltd, and for which Mr. Adjei could not offer any reasonable explanation as attributable to income, gift, loan, inheritance or any other reasonable source is deemed to have been acquired illegally in contravention of Article 286(4) of the 1992 Constitution.

In the previous case of OOP V CEO of PPA, the Commission referred the suspicious transactions in the other accounts of Mr. Adjei that were uncovered in that case to EOCO for investigation. Having referred those suspicious transactions to EOCO for investigation, the Commission would not deal with them again in the present case. The Commission will therefore restrict itself except the unexplained wealth found in the UMB Cedi account.

## **SUMMARY OF KEY FINDINGS OF THE INVESTIGATION**

At the end of the investigation, the following key findings were made:

- 1) Mr. Adjei had put himself in a position where his personal interest (financial and relational) conflicted with the performance of the functions of his office as CEO and Board Member of PPA.

- 2) Dr. Emmanuel Yaw Boakye had put himself in a position where his personal interest (relational) conflicted with the performance of the functions of his office as Board Member of PPA
- 3) No evidence of conflict of interest was found against the Chairman and the other members of the PPA Board.
- 4) Mr. Adjei had abused or improperly used his office in favour of TDL, a company affiliated to him.
- 5) No evidence of collusion or other inappropriate conduct was found against the Chairman and other members of the PPA Board.
- 6) Members of the PPA Board, with the exception the Chairman and the CEO, were not required to declare their assets and liabilities under article 286 of the Constitution.
- 7) Professor Douglas Boateng, Board Chairman, and Mr. Adjei, CEO, who were required to declare their assets and liabilities under article 286 of the Constitution, failed to declare.
- 8) Mr. Adjei had failed to show or provide any reasonable explanation that the huge cash deposits into his Universal Merchant Bank (UMB) Cedi account between August 2017 and August 2019 amounting to **GHS 5,697,530.00, (less GHS 86,000.00)** are reasonably attributable to income, gift, loan, inheritance or any other reasonable source.

## 6. DECISION

Article 287(2) provides that:

**“The Commissioner for the Commission on 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 admission” (emphasis supplied).**

In the exercise of its power under Article 287(2), the Commission has held in previous cases it investigated under Chapter 24 of the Constitution that the appropriate action taken in respect of the results of any investigation must be proportionate to the magnitude of the contravention complained of.

## **1. Adjenim Boateng Adjei**

### *i. On the Allegations of Conflict of Interest and Abuse of Office*

The Public Procurement Act, 2003 (Act 663) as amended, provides under Sections 93 as follows:

**(1) “Entities and participants in a procurement process shall, in undertaking procurement activities, abide by the provisions of article 284 of the Constitution, which provides: “A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of his functions”.**

S. 92(2) of same Act also provides:

**2) The following also constitute offences under this Act:**

**(b) directly or indirectly influencing in any manner or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract.**

The above provisions demonstrate the seriousness that the law attaches to conflicts of interest in the procurement industry, and which Mr. Adjei was heard on the documentary espousing. All these go to show that the Mr. Adjei did not act out of ignorance. He knew that the conduct was prohibited under the Constitution and the PPA Act, and yet chose to do it because of the personal benefits he gained from it.

However, these same allegations were made dealt with in the earlier case of the OOP V CEO of PPA for which Mr. Adjei was removed from office by His Excellency the President as the appointing Authority, and disqualified from holding public office for a period of not less than 5 years by the Commission. In the absence of any fresh and aggravating evidence the Commission will not take any additional action on the allegations of conflict of interest and abuse of office.

*ii. Allegations on Assets Declaration*

Mr. Adjei failed to submit to the Auditor-General a written declaration of all property or assets owned buy him or liabilities owed when he assumed office as CEO of PPA.

The evidence shows that although his attention was drawn to this by the Auditor-General, he nonetheless failed to declare his assets and liabilities contrary to Article 286 of the Constitution. The Commission considers his response to the constitutional requirement to declare his assets unreasonable, especially after his attention had been drawn to it. However, having been removed from office and disqualified from holding public office for a period of not less than 5 years in the case of the OOP V CEO of PPA, the Commission will not take any further action on the matter, except however, to direct this time that he must comply with the mandatory exit requirement under Article 286(1)(c) to declare his assets and liabilities as a condition for consideration for future appointment to public office after serving his term of disqualification. He has 3 months from the date of this decision within which to provide evidence before the Commission that he has complied with Article 286(1)(c).

*iii. On Allegations of Contravention of Article 286(4)*

Article 286(4) provides that:

**(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.**

Section 1 of Act 550 also provides that

**(1) Pursuant to article 286 of the Constitution, a person who holds a public office mentioned in section 3 shall submit to the Auditor-General a written declaration of**

**(c) the properties or assets owned whether directly or indirectly by that person, and**

**(d) the liabilities owed whether directly or indirectly by that person.**

**(4) In accordance with clause (1) of article 286 of the Constitution, the declaration shall be made by the public officer**

**(a) before taking office**

**(b) at the end of every four years, and**

**(c) at the end of the term of office of that public officer,**

**and shall be submitted not later than six months of the occurrence of any of the events specified in this subsection.**

Section 5 of Act 550 also provides that:

**In accordance with clause (4) of article 286 of the Constitution, the property or the assets required under section 1 to be declared, and which is or are acquired by a public officer after the initial declaration and which is or not reasonably attributable to income, gift, loan, inheritance or any other reasonable source shall be regarded as acquired illegally and in contravention of the Constitution.**

Public office is a public trust, and holders of public office must demonstrate a clear appreciation of this fundamental demand of public office.

Mr. Adjei received huge cash deposits into his Universal Merchant Bank Cedi account between August 2017 and August 2019 amounting to **GHS 5,697,530.00, (less GHS 86,000.00)** whilst he was holding public office as CEO of PPA. Although he was given every opportunity to rebut the presumption that those assets were not illegally acquired contrary to section 5 of Act 550, he was unable to show that those monies were reasonably attributable to income, gift, loan, inheritance or any other reasonable source, and therefore deemed to have acquired illegally in contravention of the Constitution.

Having abused public office to illicitly enrich himself, Mr. Adjenim Boateng Adjei has demonstrated that he can no longer be entrusted with public office. Consequently, the Commission hereby disqualifies him from holding public office for a period not less than 10 years, to run concurrently with the earlier disqualification in decision of the Commission in the case of OOP V CEO of PPA.

It is on record that Mr. Adjei did not declare his assets and liabilities. So how does section 5 of Act 550 apply to his case?

Let us take the example of two public officers (A and B), A having declared his assets and liabilities in compliance with section 1 of Act 550, and B having failed, deliberately or otherwise to declare his assets and liabilities. If both of them abused public office to illicitly enrich themselves, A to the tune of GHS50,000.00, and B to the tune of GHS4,000,000.00, would section 5 of Act 550 apply to both cases, or would it excuse B simply because he had failed to declare his assets and liabilities as required under section 1 of the Act? In other words should noncompliance enure to the benefit of the defaulting public officer?

The Commission is of the considered view that in applying the law in article 286(4) and section 5 of Act 560 so as not to defeat the purpose of the law and the mischief the law seeks to cure in the said provisions, it is the date of assumption of public office, which is the specified event in the law, that should be the basis of reference for determining the application of the provisions stated above. In other words, whether a person has illegally acquired wealth in contravention of the Constitution is determined by the date of assumption of office up to the date of exit from public office, and not necessarily whether he has declared his assets and liabilities or not. Any other understanding would encourage and embolden public office holders to deliberately fail or refuse to comply with section 1 of the Act in order to keep the proceeds of their illegally acquired assets.

Mr Adjei assumed office as CEO of PPA in March 2017. Although he failed to declare his assets and liabilities on assumption of office in contravention of article 286 of the Constitution, by the operation of article 286 of the Constitution and section 5 of Act 550, the assets that he acquired in his UMB Cedi account from that time which is not reasonably attributable to income, gift, loan, inheritance or any other reasonable source is regarded as having been acquired illegally and in contravention of section 5 of Act 550.

**Consequently, the Commission directs Mr. Adjenim Boateng Adjei to refund the sum of GHS 5,697,530.00 being cash deposits made into his Universal Merchant Bank Cedi account between August 2017 and August 2019 (less GHS 86,000.00) to the State within 6 months of the date of this decision. The said amount should be paid into the Consolidated Fund and the receipt evidencing the payment be produced before the Commission, failure to do which the Commission shall take the necessary action to recover the money from Mr. Adjei's known properties and assets.**

## **2. Prof. Douglas Boateng**

Prof. Boateng, PPA Board Chairman, failed to declare his assets and liabilities as required by Act 550. **The Commission finds his excuse for not declaring his assets and liabilities not reasonable, and hereby disqualifies him from appointment as Chair or member of any public Board, Council or Commission for a period not less than 2 years from the date of this decision.** The Commission is of the considered view that the disqualification should be limited to public boards, councils and commissions, and not to extend to Public Office generally, except however, that he must comply with the mandatory exit requirement under Article 286(1)(c) to declare his assets and liabilities as a condition for consideration for future appointment to public office. He has 3 months from the date of this decision within which to provide evidence before the Commission that he has complied with Article 286(1)(c)

### **3. Dr. Emmanuel Yaw Boakye**

Dr. Boakye put himself in a position where his personal interest conflicted with the performance of the functions of his office as member of the PPA Board. The Commission finds his explanation/defense unsatisfactory. **Consequently, the Commission hereby disqualifies him from being appointed a member of any public boards, councils and commissions for a period of 3 years.** The Commission is of the considered view that the disqualification should be limited to public boards, councils and commissions, and not to extend to public office generally.

With the exception of Mr Adjenim Boaten Adjei, Prof. Douglas Boateng and Dr. Emmanuel Boakye, the Commission has not made any adverse findings against the other Board members. The allegations of corruption, sale of contract and others not specifically dealt with in this decision are matters that are receiving the attention of the OSP and EOCO.

## **RECOMMENDATIONS**

Section 18 (1) of Act 456 mandates the Commission to make recommendations that it thinks fit after an investigation.

1) As noted above, Section 86 of Act 663 as amended provides that:

**“(1) The Board shall, with the approval of the Minister, compile and publish a code of conduct that shall apply to each official of a procurement entity, the members of an evaluation panel, members of a tender review committee, members of the Board as well as tenderers, suppliers, contractors and consultants.**

**(2) The code of conduct shall address:**

- (a) conflicts of interest in procurement;**
- (b) measures to regulate matters concerning personnel responsible for procurement;**
- (c) declarations of interest in particular procurements;**
- (d) screening procedures and training requirements; and**
- (e) any other matter related to the ethics of procurement.**

**(5) The code of conduct shall promptly be made accessible to the public and shall be updated regularly as directed by the Board.**

The results of this investigation have reinforced the wisdom behind the legislative intendment of Parliament in Section 86 of the PPA Act as amended.

The Commission, therefore, repeats its earlier directive in the case of the OOP V CEO of PPA to the newly constituted Board of the PPA to, as a matter of urgency, obtain approval from the Minister for Finance, and to compile and publish the code of conduct envisaged under Section 86 of Act 663 as amended, and have it ready for use not later than six (6) months from the date of this decision.

2) Sections 34A and 38 (1) of Act 663 require that procurement entities that decide to use the restricted tender method must apply to the PPA for

approval and must justify why they had decided the use of that method of procurement. The evidence available to the Commission shows that except the Ministry of Education which provided specific reasons and justification for its application to the PPA Board, many of the applications for restricted tender between March 2017 and August 2019 from procurement entities reviewed in the course of this investigation did not provide any justification, and yet the same were approved by the PPA Board. The PPA Board is directed to pay closer attention to this irregularity and ensure the practice does not recur.

3) Article 229 provides as follows:

**For the purposes of performing his functions under this Constitution and any other law, the Commissioner may bring an action before any court in Ghana and may seek any remedy which may be available from that court.**

Article 287 of the Constitution also provides:

**287 (1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter [Chapter 24] 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 for 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”.**

By the operation of article 287 the Commissioner and the Chief Justice are given exclusive mandate to enforce the provisions of chapter 24 which includes article 286(4).

To enable the Commissioner, or the Chief Justice as the case may be, seek remedy available in the court to enforce its power under article 286(4), the Commission recommends to the Rules of Court Committee to make rules and regulations for regulating the practice and procedure envisaged under article 286(4).

4) In the course of this investigation, the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) came under scrutiny again. The long title of Act 550 describes it as an Act to provide for the declaration of assets and liabilities by public office holders in conformity with Chapter 24 of the Constitution. The Commission reaffirms its recommendations in the recent case of **Alliance for Social Equity & Public Accountability (ASEPA) Vrs Jean A. Mensa**, on the Assets Declaration Regime in Ghana.

Act 550 has often been criticized as ineffective and there is need to improve the legal framework for the declaration of assets and liabilities by public officers by introducing a more comprehensive legislation that adequately fleshes out or elaborates the provisions of Chapter 24 of the Constitution as the Conduct of Public Officers (CoPO) Bill 2021 seeks to do.

A robust CoPO Bill should ensure that Article 286 is sufficiently elaborated to make adequate provision for civil or administrative sanctions or to make provision for same to be made in subsidiary legislation, but more importantly, the Bill should strengthen the mechanisms for incentivizing and compelling compliance.

For example, it should be possible for the CoPO Bill before Parliament to elaborate the provision “before taking office” in Article 286(1)(a) in a manner that addresses the weaknesses in Act 550 and strengthens compliance with the Assets Declaration Regime. One of the effective ways to ensure speedy compliance is to disable relevant public officers from ‘taking office’ or receiving any emolument or benefit from office until they can show that they have complied with Article 286(1) (a).

The Bill should specifically provide that appointing authorities should require proof of declaration of assets and liabilities before appointees are allowed to take office. In the case of elected officials like the President and Members of Parliament, the Bill should specifically provide that they show evidence of having declared their assets and liabilities before they are sworn into office, since there is sufficient time between when they are elected and when they are sworn into office to comply with Article 286(1) (a). The Bill should also specifically provide that elected or appointed public officers to whom Article 286 applies shall not be entitled to any emoluments or benefits of office until they have complied with Article 286(1) (a).

In respect of Article 286(1) (b) (i.e. at the end of every four years), the Bill should disable persons who fail to declare their assets and liabilities at the end of every four years from receiving any emoluments or benefits from office unless they comply with (1) (b).

In respect of Article 286(1) (c) (i.e. at the end of his term of office), the CoPO Bill should disable persons who fail to declare their assets and liabilities at the end of their term of office from receiving any entitlements or benefits from office until they comply with (1) (c).

These, undoubtedly, could be the watershed that could incentivize or compel relevant public officers to comply with Article 286 with little fuss. Again, a clear provision of that nature would empower the

Commissioner or the Chief Justice as the case may be to apply the appropriate administrative action of having persons who receive emoluments or other benefits before fulfilling this condition of office to refund same.

Having said that, we equally counsel that in strengthening the law on the Assets Declaration Regime, we should be careful not to distort the spirit and letter of the law by importing criminal sanctions into the COPO Bill.

The Commission would like to commend Ghana Integrity Initiative (GII) for the public-spiritedness it exhibited by submitting the complaint to the Commission. The Commission equally commends the Respondents for their cooperation.

**DATED THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2022 AT THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE, OLD PARLIAMENT HOUSE, JOHN EVANS ATTA MILLS HIGH STREET, ACCRA.**



**Joseph Whittal**  
**Commissioner**