

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

BRIEFING NOTE: TRINIDAD AND TOBAGO

I. Jurisdiction Overview:

The Republic of Trinidad and Tobago is a parliamentary democracy modeled on the Westminster system. There is a bicameral legislature, which is comprised of a House of Representatives and a Senate. The *Integrity in Public Life Act* (the “Act”) is the key piece of relevant legislation; it is aimed at making “new provisions for the prevention of corruption of persons in public life by providing for public disclosure; to regulate the conduct of persons exercising public functions; to preserve and promote the integrity of public officials and institutions, and for matters incidental thereto.” This briefing note examines this Act.

II. Scope of Coverage:

The Act came into force in November 2000. It applies to every person in public life, and to people exercising public functions. A “person in public life” is defined under the Act as including the following:

- Members of the House of Representatives;
- Ministers of Government;
- Parliamentary Secretaries;
- Members of the Tobago House of Assembly;
- Members of Municipalities;
- Members of Local Government Authorities;
- Senators;
- Judges and Magistrates appointed by the Judicial and Legal Service Commission;
- Members of the Boards of all Statutory Bodies and State Enterprises, including those bodies in which the State has a controlling interest; and
- Permanent Secretaries and Chief Technical Officers

“Persons exercising public functions” is defined under the Act as all persons holding office under the Public Service, Judicial and Legal Service, Police Service, Teaching Service and the Statutory Authorities’ Service Commission, as well as members of the Diplomatic Service, and Advisers to the Government.

III. Prohibited Activities:

A. General Prohibition on Conflicts of Interest

Part IV of the Act contains a “Code of Conduct” which includes a definition of the general rule regarding conflicts of interest. The act states that “a conflict of interest is deemed to arise if a person in public life or any person exercising a public function were to make or participate in the making of a decision in the execution of his office and at the same time knows or ought reasonably to have known, that in the making of the decision,

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

there is an opportunity either directly or indirectly to further his private interests or that of a member of his family or of any other person.”

B. Gifts

Persons in public life, or persons exercising a public function, may only receive gifts, fees or personal benefits which are both authorized by law and which flow directly, or indirectly, from the exercise of his or her duties of office.

This exception is qualified where the gift or benefit that is received exceeds \$2000 in value, or where the value, directly or indirectly, from one source exceeds \$2000 in a twelve month period. If this occurs then the individual must file, in addition to their declaration, a statement which details the circumstances of the gift, benefit or fee, the nature of that gift, benefit or fee, and its source.

C. Travel

Travel is not explicitly covered under the Act. The reason for this is that it is likely subsumed under gifts, fees or personal benefits.

D. Contracts with the Government and Private Sector

The Act prohibits persons in public life, or persons exercising a public function, from using their office to influence another person or public body, where that decision will further their own private interests.

E. Use of Information

Any information that a person in public life, or a person exercising a public function, derives through their office, and which is not available to the public at large, shall not be used in furtherance of private interests.

F. Anti-Nepotism Provisions

Persons in public life, or persons exercising a public function, must not use their position in furtherance of their own, their family's, or any person's private or personal interests. Similarly, their position must not be used in such a way that affords a particular person, or group, undue preferential treatment. Succinctly, they must conduct themselves in a fair and impartial manner.

G. Outside Interests

Persons in public life, or persons that exercise a public function, may not engage in anything, regardless of its form, which is inconsistent with their office, function and duty. The Act specifically references transactions, acquisition of a position, and any

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

commercial or other interest (this includes assets) which could potentially result in a conflict of interest.

IV. Affirmative Requirements:

A. Duty of Recusal

If there is a real, or potential, conflict of interest, those within the Act's jurisdiction must disclose the nature of the interest in accordance with the Integrity Commission's (hereinafter "the Commission") prescribed procedures, and recuse themselves from that particular decision-making process.

B. Duty of Disclosure

1. Confidential Report-For Persons in Public Life

A person in public life must, within three months of their appointment, complete and file a form prescribed by the Commission, which is empowered pursuant to the Act, which declares their income, assets, and liabilities in respect to the previous year. These persons must continue to file these declarations every year, for as long as they remain a person in public life. The person filing the declaration may supplement it with a statement regarding their net worth.

These declarations remain compulsory, even if a person ceases to be a person in public life during the year in which the declaration is required, or the following year.

The Commission has the discretion to vary this time requirement, if there is good cause, for a period of up to six months.

(a) Particulars of the Report

The declaration of a person in public must include particulars known to the declarant regarding their income, assets and liabilities, and that of their spouse and dependent children. If the spouse of the person in public life was not ordinarily residing with the declarant for a continuous period of six months, during the period in which the declaration was made, or any dependent children were not living with the declarant at any time during which the declaration was made, the particulars to be disclosed regarding them is limited to assets held by them in trust for, or as an agent of, the declarant.

In addition to the required declaration, a person in public life must file a statement of registrable interests, in the form prescribed by the Commission. This statement must contain information relating to a person in public life in respect of:

- (a) particulars of any directorships held in any company or other corporate body;
- (b) particulars of any contract made with the state;

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

- (c) the name or description of any company, partnership or association in which the person is an investor;
- (d) a concise description of any trust to which the person is a beneficiary or trustee;
- (e) beneficial interests held in any land;
- (f) any fund to which the person contributes;
- (g) particulars of any political, trade or professional association to which the person belongs;
- (h) particulars relating to sources of income; and
- (i) any other substantial interest, whether of a pecuniary nature or not, which he considers may appear to raise a material conflict between his private interests and his public duty.

The Registrar will compile the information pertaining to registrable interests, and enter it into a Register of Interests. This Register can be reviewed, upon request, by any member of the public.

If there are any changes in a declarant's registrable interests, that person in public life must notify the Registrar within six weeks of said changes.

However, none of these requirements are to be interpreted as compelling a person in public life to disclose the actual amount of any financial benefit, contribution or interest.

All declarations, records and related information are to be treated by the Commission, any person performing a function for the Commission or an employee of the Commission as secret and confidential.

2. Declarations for Persons Holding Office Under the Public Service, Judicial and Legal Service, Police Service, Teaching Service or Statutory Authorities' Service Commission

Persons holding office under the Public Service, Judicial and Legal Service, Police Service, Teaching Service or Statutory Authorities' Service Commission must, upon their appointment, and thereafter as required, declare to the appropriate Commission, in the prescribed form, the following information (on the condition that it is treated as confidential):

- a) all business, commercial and financial interests and activities in which he is engaged; and
- (b) all personal property, assets and liabilities in respect of himself, his spouse and dependent children.

3. Disclosure and Public Declaration re Financial Matters

Disclosure regarding financial matters is treated as both secret and confidential. Therefore, there is no obligation to make public declarations regarding the same.

C. Blind Trusts

If the Commission believes that a breach of the Act may have occurred, or a conflict of interest may arise, the Commission may order that a person in public life place all, or part of, their assets in a blind trust, for the purposes of the Act, on such terms and conditions as the Commission considers just. The person in public life would also be required to file a copy of the trust deed with the Commission.

The trust company that manages the blind trust must, notwithstanding any other law, respond to any inquiries from the Commission regarding the management of the assets in said trust.

A blind trust is created when a person in public life enters into an agreement with a qualified trust company whereby:

- (a) all or any part of his assets are conveyed to the trust company for its management, administration and control, in its absolute discretion without recourse or report to the persons beneficially entitled to those assets;
- (b) income derived from the management of the assets is to be distributed to him as agreed;
- (c) should the assets be converted into other assets, that fact is not to be communicated to him, until he ceases to be a person in public life; and
- (d) after he ceases to be a person in public life, proper and full accounting is to be made to him, as the circumstances of the management of the trust require.

D. Confidential Information

All declarations, records and related information are to be treated by the Commission, any person performing a function for the Commission, or an employee of the Commission as secret and confidential.

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

V. Enforcement:

The Commission is created under the Act and is comprised of five individuals of integrity and high standing. The Commission is independent and is not subject to the power or control of any other person or authority. Where it considers it appropriate, the Commission is empowered to make use of any law enforcement agency, or part of the Public Service.

The Commission also has the power to authorize investigations, compel witnesses, order production of reports, documents or other information. Most importantly, it is vested with an enormous discretionary power to “do all such things as it considers necessary or expedient for the purpose of carrying out its functions.”

VI. Sanctions:

The Commission has powerful sanctions at its disposal. However, subject to one offence under the Act, written permission to prosecute must be obtained from the Director of Public Prosecutions. Therefore, the agent responsible for dealing with a breach of the Act is effectively the Director of Public Prosecutions.

If a person to whom the Act applies fails to file a declaration, the Commission may make an *ex parte* application to the High Court for an order compelling compliance with the Act. Failure to comply with this order is an offence and, upon conviction, a person is liable for a fine of \$150,000.

Where the Commission feels that there may not have been full disclosure, it may create a tribunal to enquire into the matter. If, pursuant to this inquiry, the Commission is satisfied that there has been a breach of the Act, it shall take such actions as it deems appropriate. If the Commission is satisfied that an offence has been committed, it shall refer the matter to the Director of Public Prosecutions.

Where a person in public life fails to provide a declaration, or particulars, and there are no reasonable grounds for not complying with the Commission, that person is guilty of an offence and is liable on summary conviction to a fine of \$250 000, and to imprisonment for a term of up to ten years.

Similarly, if a person in public life knowingly makes a false declaration, or fails to attend an inquiry being conducted by a tribunal, that person is guilty of an offence and is liable on summary conviction to a fine of \$250 000 and to imprisonment for a term of up to ten years.

If a person in public life is deemed to be in possession of undisclosed assets or income, and they fail to disclose their existence, or if an inquiry determines that their existence

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

was deliberately omitted from the required declaration, they are liable on summary conviction to a fine of \$250 000 and imprisonment for a term of up to ten years. Furthermore, if the failure to disclose is determined to be deliberate, a Court may also order:

- If the property is in the Republic of Trinidad and Tobago, for it to be forfeited; or
- If the property is outside of the Republic of Trinidad and Tobago, order that its equivalent value be paid by said person to the Court.

If the Commission determines that there is a breach of the “Code of Conduct” portion of the Act by a member of Parliament, they shall report the matter to the Director of Public Prosecutions.

Any person who intends to file a false report, or influences another person, or deals fraudulently with the Commission, is guilty of an offence and liable on conviction to a fine of \$500 000 and to imprisonment for a term up to ten years.

Knowingly misleading the Commission, or one of its investigating officers, by giving false information is an offence and a person is liable on conviction to a fine of \$250 000 and imprisonment for a term of up to five years.

Where the Commission is conducting an inquiry, and a person fails to comply with its investigation, that person commits an offence and is liable to a fine of \$150 000 and imprisonment for a term of three years.

All members of the Commission, people performing functions for the Commission, and its employees that are required to deal with information on a secret and confidential basis, who communicate, or attempt to communicate said information to a person that is not authorized to receive such information, are guilty of an offence. Upon summary conviction, persons are liable to a fine of \$250,000 and up to ten years incarceration. This is the one offence in the *IPL* where written permission to prosecute is not required.

All members of the Commission, people performing functions for the Commission, and its employees that disclose, or attempt to disclose, information or evidence that is collected for the Court relating to a charge under the Act, the *Prevention of Corruption Act* or any other written law, shall be guilty of an offence and liable on summary conviction to a fine of \$250 000 and to imprisonment for a term up to five years.

VII. Post Employment Prohibitions

Persons that are subject to the Act who, as a result of their position or office, become privy to matters of a confidential nature, shall not disclose said confidential information, unless the performance of their duties or justice strictly demands it, even after they cease to be persons in public life or persons exercising public functions.

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

VIII. References

The *Integrity in Public Life Act*, chapter 22:01, 2000, online:

<<http://rgd.legalaffairs.gov.tt/Laws/Chs.%2020-22/22.01/22.01%20aos.htm>>.

The Constitution of The Republic of Trinidad and Tobago, online:

<<http://pdba.georgetown.edu/Constitutions/Trinidad/trinidad76.html>>