

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

BRIEFING NOTE: THE UNITED NATIONS (UN) AND THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

I. Overview:

The United Nations (herein referred to as the “UN”) is an international governmental organization, comprised of 192 member states (nearly every recognized sovereign state in the world). The General Assembly, which includes all member states, meets in New York City in the United States of America.

The Organization for Economic Cooperation and Development (herein referred to as the “OECD”) is an international organization comprised of 30 member states, based out of Paris, France. The member states embrace principles including representative democracy and the free market economy. Most of the members of the OECD are high-income developed countries.

II. Scope of Coverage of Conflict of Interest Provisions:

The provisions relating to protection against conflicts of interest which have been drafted by both the UN and the OECD are intended to act as guidelines for member states, and to be viewed as “best practices” which should be considered and implemented in national legislation. They are meant to provide a practical framework of reference for reviewing existing solutions and modernizing mechanisms in line with the best practices found in countries around the world. Furthermore, the guidelines are to be considered by public officials for guidance in relation to the proper performance of their duties.

III. Recommendations:

The UN did not include any definition of what constitutes a conflict of interest in its best practices guidelines. However, generally, the UN guidelines mandate that public officials are not to use their official authority for the improper advancement of their own or their family’s personal or financial interest. Public office holders are not to engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties, or the discharge of their duties.

The OECD guidelines define a conflict of interest thusly: “a conflict of interest involves a conflict between the public duty 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.” The guidelines also discuss an *apparent conflict of interest*, where a conflict of interest can be said to exist where it *appears* that a public official’s private interests could improperly influence the performance of their duties *but this is not in fact the case*. Also, the guidelines define a *potential conflict of interest*, which arises where a public official has private interests

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

which are such that a conflict of interest would arise if the official were to become involved in relevant official responsibilities in the future.

The OECD guidelines promote an approach which provides a coherent and consistent system which is capable of dealing with conflict of interest situations. The key functions of this approach are:

- **Definition** of the general feature of conflict of interest situations which have the potential to put organizational and individual integrity at risk.
- **Identification** of specific occurrences of unacceptable conflict of interest situations.
- **Leadership and commitment** to implementation of the conflict of interest policy.
- **Awareness** that assists compliance and **anticipation** of at-risk areas for prevention.
- **Appropriate disclosure** of adequate information, and **effective management** of conflicts.
- **Partnerships** with other stakeholders, including contractors, clients, sponsors and the community.
- **Assessment and evaluation** of a conflict of interest policy in the light of experience.
- **Redevelopment and adjustment** of policy and procedures as necessary to meet evolving standards.

A. General Prohibitions on Conflict of Interest

The UN Guidelines mandate that public office holders shall never in any way use their official authority for the advancement of their own or their family's personal or financial interest. They shall not engage in any transaction, acquire any position or function, or have any financial, commercial or other comparable interest that is incompatible with their office, functions or duties.

The UN Guidelines require public officials to be attentive, fair, and impartial in the performance of their functions and, in particular, in their relations with the public. Public officials are to ensure that the public resources which they are responsible for are administered in the most effective and efficient manner possible.

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

The UN Guidelines state that at no time shall a public official afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.

The OECD Guidelines mandate that public officials are to make decisions and provide advice on the basis of relevant law and policy, without regard for personal gain. Public officials are not to be prejudiced by the religious, professional, party-political, ethnic, family, or other personal preferences or alignments of others.

The OECD suggests that public officials should dispose of, or restrict the operation of, private interests that could compromise official decisions in which they participate. Also, public officials should avoid private-capacity action which could derive an improper advantage from 'inside information' obtained in the course of their official duties, where the information is not generally available to the public, and are required not to misuse their position and government resources for private gain.

The OECD Guidelines suggest that member states work closely with the business and non-profit sectors to ensure that ethics policies and rules are understood, in an attempt to prevent conflicts of interest before they arise.

B. Gifts

The UN Guidelines mandate that public officials shall not solicit or receive, directly or indirectly, any gift or other favour that may influence the exercise of their functions, the performance of their duties, or their judgment while carrying out their official duties.

The OECD Guidelines state that public officials should not seek or accept any form of improper benefit (including any tangible or intangible gifts, or entertainment or travel expenses) in expectation of influencing the performance or non-performance of official duties or functions.

C. Confidential Information

The UN Guidelines stress that matters of a confidential nature which become known to public officials through their official duties are to be kept confidential, unless national legislation, the performance of duty or the needs of justice require otherwise. The duty of confidentiality remains after the employee leaves the public sector.

The OECD Guidelines explain that public officials are in a position of trust, and as such are expected not to take improper advantage of a public office or official position which they held previously, including privileged information obtained in that position. This expectation to keep information confidential continues after the employee leaves the public sector.

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

D. Disclosure of Assets

The UN Guidelines promote the disclosure of assets by public officials, as well as the disclosure of assets held by their spouses and dependents, which have the potential to cause conflicts of interest. The guidelines also recommend that member states require that public employees provide detailed information on the source of any property or asset that is acquired after their appointment to a senior post.

The OECD Guidelines suggest that member states develop a process for disclosure, by which employees can disclose assets (and other information) which could potentially conflict with their official duties. Such disclosure is expected to be formal (by means of *registration* of information identifying the interest), and is required to be updated regularly. The guidelines suggest that the disclosure need not be public, but can rather be done within the machinery of state itself. However, the more senior the public official, the more likely it is that public disclosure will be appropriate; the more junior, the more likely it is that internal disclosure to the management of the official's organization will be sufficient.

E. Disclosure of Business Dealings

The UN Guidelines require that certain public officials, to the extent required by their position, shall declare all business, commercial and financial interests or activities undertaken for financial gain that have the potential to raise a conflict of interest. This information is to be updated regularly.

The OECD Guidelines suggest that member states require public office holders to disclose all business and commercial relationships that could potentially lead to a conflict of interest. The Guidelines suggest that the state should clearly define the circumstances, including the required authorization procedures, under which a public official may undertake business or commercial dealings outside of their public office.

F. Voluntary Recusal

The UN Guidelines do not explicitly place a positive requirement on public officials to recuse themselves in situations where a conflict of interest is present. However, as noted above, the guidelines explain that public office holders shall not engage in any transaction, acquire any position or function, or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties. This guidance implicitly requires government employees to recuse themselves in conflict of interest situations.

The OECD Guidelines recommend that public officials' attempt to dispose of, or restrict the operation of, private interests that could compromise official decisions in which they participate. However, in cases where this is not feasible, a public official should abstain from involvement in official decisions which could be compromised by their private interests and affiliations. Where a particular conflict is not likely to recur

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

frequently, it may be appropriate for the public official concerned to maintain their current position but not participate in decision-making on the affected matters, or by abstaining from voting on decisions, or withdrawing from discussion of affected proposals and plans, or not receiving relevant documents and other information relating to their private interest.

Where a serious conflict of interest cannot be resolved in any other way, the OECD Guidelines suggest that the public official should be required to resign from their official position.

G. Political Activity

The UN Guidelines recognize the right of public officials to participate in the political process of their country, as private citizens. However, their political activity must be kept separate from their public position, and not be such as to impair public confidence in the impartial performance of their functions and duties.

The OECD Guidelines respect that a public employee's political affiliation has the potential to result in a conflict of interest arising in their official duties. While the guidelines do not specifically address which roles public employees can play in politics, they do suggest that member states craft legislation in a manner which allows employees to understand what types of political activity can raise ethics issues in relation to their public duties.

H. Transparency of Decision Making

The UN encourages member states to make all government procedures and state activity transparent in order to avoid and combat all types of corruption, including conflicts of interest.

The OECD Guidelines explain that public officials and public organizations are expected to act in a manner that will bear the closest public scrutiny. This obligation is not fully discharged by acting within the letter of the law, but it also entails respecting broader public service values such as disinterestedness, impartiality, and integrity. The Guidelines note that public organizations and officials should ensure consistency and an appropriate degree of openness in the process of resolving or managing a conflict of interest situation. Moreover, public officials and organizations should promote scrutiny of their management of conflict of interest situations, within the applicable legal framework which is constructed by the state.

I. Post-Employment Restrictions

The UN Guidelines mandate that public officials must comply with national measures established which place restrictions on their post-employment activities. Generally, former employees are not allowed to take improper advantage of their previous office for their own gain, or for the gain of others.

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

The UN suggests that, for a reasonable time after they leave the public service, former public sector employees obtain governmental permission prior to accepting employment or consultancy assignments from business or private concerns that are in financial relationship with the governmental department or agency in which such officials were employed. During the same period after separation, such permission shall also be required prior to engaging in any private or business activity related to, or dependent on, their previous position in the public service.

The OECD Guidelines suggest that member states make clear what activity is permitted after an employee leaves public office. The state is to define the circumstances, including the required authorization procedures, under which a former employee is allowed to act. The guidelines explain that, generally, public officials are expected not to take improper advantage of a public office or official position which they held previously.

IV. Enforcement

The Guidelines promoted by the UN have no enforcement mechanism, and as such are meant to merely provide guidance to member states in the implementation of domestic conflict of interest statutes. The guidelines suggest that public officials who knowingly and deliberately, or recklessly, disregard the provisions of national conflict of interest statutes should be subject to appropriate disciplinary and administrative measures. Serious violations of ethics rules should be punishable by criminal sanctions, including forfeiture and confiscation of illicit proceeds with compensation to any injured party.

While the OECD does not provide specific instructions on enforcement protocol, the guidelines do provide general guidance. The guidelines explain that member states must provide procedures for establishing a conflict of interest offence, and proportional consequences for non-compliance with conflict of interest policy including disciplinary sanctions. The OECD Guidelines suggest that there should be personal consequences for any individual who breaches national conflict of interest legislation. Non-compliance should be regarded as, at minimum, a disciplinary matter, while more serious breaches involving actual conflict could result in sanctions for abuse of office, or prosecution for a corruption offence.

The OECD Guidelines also highlight that positive management can provide effective complementary forms of redress for breaches of national conflict of interest policy, and can be affective in dissuading those who would seek to benefit, directly or indirectly, from such breaches. Such measures could include retroactive cancellation of affected decisions and tainted contracts, and exclusion of the beneficiaries from future processes.

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

V. References

The following list contains the bibliographical information for the relevant conflict of interest provisions for both the United Nations and the Organization for Economic Co-Operation and Development.

United Nations

United Nations Economic and Social Council Resolution 1995/14 of July 24th, 1995, *Action Against Corruption*. Online: <http://www.un.org/documents/ecosoc/res/1997/eres1997-25.htm>

United Nations General Assembly Resolution 50/225 of April 19th, 1996, *Public Administration and Development*. Online: <http://www.un.org/documents/ga/res/50/a50r225.htm>

United Nations General Assembly Resolution 51/59 of January 28th, 1997, *Action Against Corruption*. Online: <http://www.un.org/ga/documents/gares51/gar51-59.htm>

Organization for Economic Co-Operation and Development

Organization for Economic Co-Operation and Development, Guidelines for Managing Conflict of Interest in the Public Sphere. Online: <http://www.oecd.org/dataoecd/13/22/2957360.pdf>

Organization for Economic Co-Operation and Development, Guidelines for Managing Conflict of Interest in the Public Sphere – Report on Implementation, 2007. Online: <http://www.oecd.org/dataoecd/18/35/39691164.pdf>