

LEGISLATIVE GUIDELINES:
BASIC ELEMENTS ON CONFLICTS OF INTEREST

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INTRODUCTION

This guide will cover the basic elements that should be included in the rules aimed at preventing conflicts of interest, that is, in the rules created to prevent the exercise of public service from being adversely influenced by the personal interests of those who carry them out, so that their actions may contradict or may be perceived as contradicting the interests they are officially charged with protecting and could therefore violate the trust in public servants and in public administration..

Such rules must be aimed at preventing that those conflicts arise, putting mechanisms or measures in place to resolve those conflicts when they arise and establishing corrective measures or sanctions when those procedures are not followed.

The guide is divided according to the different phases in which the aforementioned conflicts may be detected or may indeed arise, that is, before entering public service, during public service, and after leaving public service.

1. RULES TO PREVENT CONFLICTS OF INTEREST BEFORE ENTERING PUBLIC SERVICE

1.1. Coverage

1.1.1. General Rules

Provisions applicable to all branches of government.

1.1.2. Special rules

Special provisions regarding conflicts of interest before entering public service applicable only to public servants of a certain rank who, because of their special position, may require special treatment or the establishment of more restrictive standards, such as:

- a) Legislators
- b) Ministers or Cabinet Secretaries
- c) Judges and judicial employees
- d) High government officials
- e) Officials in control agencies (Office of the Comptroller, Public Ministry, Office of the Prosecutor General, Office of the Attorney General, etc.)
- f) Central banks officials
- g) Customs officials
- h) Officials in tax revenue offices
- i) Officials responsible for government purchasing

1.1.3. Rules applicable to private individuals

Provisions applicable to private individuals who perform public duties.

1.2. Background

1.2.1. General Provisions

Provisions that prevent individuals from entering government service who, because of their background, could violate the trust in public servants and in government service, such as individuals who have been criminally or administratively penalized for acts of corruption.

1.2.2. Background disclosure

Provisions that establish that whoever aspires to or is in the process of entering government service must disclose any criminal, administrative or any other type of record of penalties imposed for acts of public corruption before entering government service.

1.2.3. Background verification

Provisions that assign a specific official or entity the responsibility of conducting background checks.

1.2.4. *Sanctions*

Provisions that provide for consequences in the event of non-compliance with the obligation to disclose background, or the provision of false information, such as denying employment and other additional penalties.

1.3. Private interests in conflict

1.3.1. *General provisions*

Provisions that prevent persons from entering government service whose private interests could conflict or could be perceived to conflict with the interests that person would be charged with protecting if he or she were to occupy the position, and that could therefore violate the trust in public servants or in government.

1.3.2. *Income disclosure*

Provisions that establish that whoever aspires to or is in the process of entering government service has the obligation to disclose all sources of income or other types of interests.

1.3.3. *Verification of income disclosure*

Provisions that assign to a special official or entity the responsibility of verifying the information contained in the income disclosure.

1.3.4. *Sanctions*

Provisions that provide for consequences in the event of non-compliance with the obligation to submit an income disclosure, or the submission of a disclosure containing false information, such as denying employment and other additional penalties.

1.4. Databases

1.4.1 *Structure*

Provisions that provide for the creation of databases with background records or income disclosure records to be used for quick reference by those who are legally authorized to do so.

1.4.2. *Updating*

Provisions that establish that databases must be constantly updated and that those who perform public functions must promptly inform the responsible official or entity of any changes or new situations that could lead to an eventual conflict of interest.

2. RULES TO PREVENT CONFLICTS OF INTEREST DURING PUBLIC SERVICE

2.1 Coverage

2.1.1. General Rules

Provisions applicable to all branches of government.

2.1.2. Special Rules

Special provisions governing conflicts of interest while in public service applicable only to officials of a certain rank who, because of their special position, may require special treatment or the establishment of more restrictive standards, such as:

- a) Legislators
- b) Ministers or Cabinet Secretaries
- c) Judges and judicial officials
- d) High government officials
- e) Officials in control entities (Office of the Comptroller, Public Ministry, Office of the Prosecutor General, Office of the Attorney General, etc.)
- f) Officials in central banks
- g) Customs officials
- h) Officials in tax revenue offices
- i) Officials responsible for government purchasing

2.1.3. Rules applicable to private individuals

Provisions that are also applicable to private individuals who are performing public functions.

2.2. Private interests of officials or their relatives

Provisions to those who perform public functions from any form of participation in government decisions regarding matters in which the officials or persons to whom they are related by marriage, permanent union or by family, have a private interest.

2.3. Personal or business relationships

Provisions to prevent those who perform public functions from any form of participation in government decisions regarding matters in which persons with whom the public servant has a business relationship, owes a debt to, has loaned money to, maintains a friendship with or is a declared enemy of, have a private interest.

2.4. Membership in Partnerships

Provisions to prevent those who perform public functions from any form of participation in government decisions regarding matters in which investment partnerships of which they are members, apart from companies or corporations in which they do not own a significant number of shares, have private interests.

2.5. Parallel professional activities

Provisions to prevent the performance of public service from being adversely influenced by the private interests of individuals in public service because of their work or professional activities related to other employment or due to their private practice of a profession or trade.

2.6. Other parallel activities

Provisions to prevent the performance of public service from being adversely influenced by the private interests of those who carry them out, as a result of their carrying out other activities, with or without pay, due to their membership in or relationship with any of the following:

- a) A political party or movement;
- b) A religion;
- c) A trade union;
- d) An economic trade union;
- e) A professional association;
- f) A non-governmental organization;
- g) Any other organization, group or non-profit organization.

2.7. Nepotism

Provisions to prevent those who perform public functions from employing persons to whom they are related by marriage or permanent union or family, or persons who are related in the same manner to public servants with authority to employ them.

2.8. Providing consulting services

Provisions to prevent those who perform public functions from providing consulting services or carrying out private activities regarding matters of which they have knowledge due to their official position.

2.9. Gifts, favors and other perks

Provisions to prevent those who perform public functions from receiving gifts, favors, invitations or any other type of benefit, that, due to their nature, could adversely influence the performance of their duties when making decisions on or dealing with official matters within their purview.

2.10. Improper actions

Provisions to prevent those who exercise public functions from being adversely influenced to the detriment of the public interest they are charged with protecting, by the improper actions of others who come to them for the purpose of advancing their personal interest.

2.11. Income disclosure

2.11.1. Obligation to disclose

Provisions that obligate those who perform public functions to disclose their sources of income

and of any other type of interest.

2.11.2. *Deadlines*

Provisions that stipulate when those disclosures must be submitted and updated.

2.11.3. *Verification of income disclosure*

Provisions that assign to a specific government official or entity the responsibility to verify the information contained in the income disclosure.

2.11.4. *Sanctions*

Provisions that provide for consequences in the event of non-compliance with the obligation to submit an income disclosure or for submitting false information.

2.12. Enforcing Compliance

2.12.1. *Determining that a conflict exists*

Provisions that provide for mechanisms that make it possible to determine, in specific cases, whether a person who performs public functions has a conflict of interest.

2.12.2. *Protecting the public interest*

Provisions that establish the necessary measures to protect the public interest in the event of conflicts of interests such as the following:

- a) Removal of the person performing public functions from their duties;
- b) Separation from participating in the official action regarding the matter in question;
- c) Relinquishing the private interests in conflict;
- d) Invalidation of the decisions issued by the person in a conflict of interest situation.

2.12.3. *Competence*

Provisions that assign to a specific official or entity the responsibility to ensure compliance.

2.12.4. *Sanctions*

Provisions that provide for consequences in the event of non-compliance with the rules and regulations governing conflicts of interest while in public service.

2.13. Databases

2.13.1. *Creation*

Provisions that provide for the creation of databases with income disclosure records to be used

for quick reference by those legally authorized to do so.

2.13.2. *Updating*

Provisions that establish that databases must be constantly updated and that those who perform public functions must promptly inform the responsible official or entity of any changes or new situations that could lead to an eventual conflict of interest.

3. RULES TO PREVENT CONFLICTS OF INTEREST AFTER LEAVING PUBLIC SERVICE

3.1. Coverage

3.1.1. *General rules*

Provisions applicable to all branches of government

3.1.2. *Special rules*

Special provisions governing conflicts of interest after leaving public service applicable only to officials of certain rank who, because of their special position, may require special treatment or the establishment of more restrictive regulations, such as:

- a) Legislators
- b) Ministers or Cabinet Secretaries
- c) Judges and judicial officials
- d) High government officials
- e) Officials in control entities (Office of the Comptroller, Public Ministry, Office of the Prosecutor General, Office of the Attorney General, etc.)
- f) Officials of central banks
- g) Customs officials
- h) Officials in tax revenue offices
- i) Officials responsible for government purchasing

3.1.3. *Rules applicable to private individuals*

Provisions also applicable to private individuals in government service.

3.2. Taking improper advantage of being a former public servant

Provisions to prevent those who performed public functions from taking improper advantage of their time in government service by trying to gain an advantage, obtain favors or preferential treatment for their personal interests from the government offices where they performed services.

3.3. Dealings with the government entity where the former public servant worked

Provisions that prohibit those who performed public functions from dealing, for a reasonable period of time, whether on their own behalf or on behalf of third party interests, the government entities where they once worked.

3.4. Dealings with respect to government matters of which the former public servant had knowledge

Provisions that prohibit those who performed public functions from dealing, for a reasonable period of time, whether on their own behalf or on behalf of third party interests, in government matters they had knowledge of while in public service.

3.5 Enforcing Compliance

3.5.1. Competence

Provisions that assign a specific official or entity the responsibility to ensure compliance.

3.5.2 Sanctions

- a) Provisions that establish consequences or penalties for those who performed public functions, for improperly taking advantage of their situation to the detriment of the public interest, by trying to gain an advantage, obtain favors or preferential treatment for their personal interests in the government offices where they provided services.
- b) Provisions that provide for penalties in the event that former public servants violate the prohibition on dealing with the public offices where they worked, either for their own interests or those of third parties, during the established time period.
- c) Provisions that provide for penalties in the event that former public servants violate the prohibition on dealing with government matters that they had official knowledge of, either for their own interests or those of third parties, during the established time period.

3.6. Databases

3.6.1 Creation

Provisions that establish the creation of databases with records of former public servants to be used as quick reference by those legally authorized to do so.

3.6.2. Updating

Provisions that establish that databases be constantly updated.

IV. ELEMENTS SHARED BY THE MEASURES AND MECHANISMS DESIGNED TO MAKE THE RULES AND REGULATIONS REGARDING THE PREVENTION OF CONFLICTS OF INTEREST EFFECTIVE

4.1. Courses and consultations

Provisions that establish mechanisms that ensure that individuals in those who perform public functions or who aspire to do so can learn and understand in a clear and timely fashion, the rules of conduct concerning conflicts of interest, which must provide for, among others:

- a) The periodic holding of induction courses, workshops or conferences for that purpose.
- b) The possibility for them to have easy access to some instance to clarify any doubts that may arise in specific cases.

4.2. Dissemination campaigns

Provisions that establish mechanisms, such as mass media dissemination campaigns, making information available in education centers and in public entities, which ensure that the general public is widely informed about the purpose of the aforementioned rules of conduct, the existence of mechanisms to make them effective and how to access them.