

LEGISLATIVE GUIDELINES:

**BASIC ELEMENTS ON THE PROPER CONSERVATION AND USE OF RESOURCES
ENTRUSTED TO PUBLIC OFFICIALS IN THE PERFORMANCE OF THEIR
FUNCTIONS**

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INTRODUCTION

These guidelines refer to the basic elements that should be included in legal frameworks related to the proper conservation and use of resources entrusted to government officials in the performance of their functions. As the title suggests, the elements contained herein are the basic elements that should be included in such a legal framework, and accordingly, the list of elements is not exhaustive.

1.1. Coverage

1.1.1. General Rules

Provisions which establish general standards for the proper conservation and use of resources entrusted to all those who perform public functions.

1.1.2. Special Rules

Provisions which establish special standards which are applicable to public officials of a certain category, such as:

- a. President, Prime Minister, and Heads of State
- b. Legislators
- c. Ministers or Secretaries of State
- d. Judges and judicial officials
- e. Senior government officials
- f. Officials in Central Banks
- g. Officials in oversight bodies
- h. Customs officials
- i. Officials in tax collection offices
- j. Officials responsible for public procurements

1.2. Compliance

Provisions which make a specific official or agency responsible for monitoring and ensuring compliance with the provisions related to the proper conservation and use of resources entrusted to those who perform public functions.

1.3. Use of Assets and Resources

Provisions which require that those who perform public functions use the assets and resources entrusted to them, exclusively for the purposes for which they were intended.

1.4. Use of Power or Authority

Provisions which require that those who perform public function use the powers and authority granted to them, exclusively for the purposes for which that power or authority was granted.

1.5. Safeguarding Assets and Resources

Provisions which require those who perform public functions to:

- a. Safeguard the assets and resources that have been entrusted to them because of their functions;
- b. Prevent loss, damage or undue use of those assets and resources.

1.6. Protection of Documentation

Provisions which require those who perform public functions to watch over documentation in their custody, in order to prevent it from being stolen, destroyed, hidden or used improperly.

1.7. Safeguarding Confidential Information

Provisions which require those who perform public functions to safeguard confidential information which has been entrusted to them in order to prevent it from being stolen, disclosed, hidden, or used improperly.

1.8. Timely Accounting

Provisions which require a timely accounting of the use of assets or resources entrusted to those who perform public functions.

1.9. Accountability

Provisions relating to accountability regarding public resources, and which specifically provide measures to:

- a. Ensure that auditing rules are in force;
- b. Ensure the effectiveness of the internal and external fiscal oversight systems;
- c. Ensure that oversight systems are put into practice objectively, and that they have autonomy and functional independence;
- d. Ensure that oversight systems apply to the majority of public resources, including those handled by private citizens.

1.10. Use of Secure Systems

Provisions which provide for secure systems for the conservation of public documentation and for the protection of confidential information of the State.

1.11. Additional Measures

Provisions which establish additional measures to ensure the proper use of resources entrusted to those who perform public functions, such as:

- a. The requirement of insurance for proper resource management;
- b. The rendering of accounts;
- c. Delivery of goods by inventory;
- d. Resource management assessment by internal and external or independent auditors;

- e. The publication of resource management.

1.12. Sanctions and Consequences for Non-Compliance

1.12.1. Non-Compliance

Provisions which establish sanctions and consequences, whether criminal, disciplinary, civil, or financial, related to the following:

- a. Misuse of assets and resources;
- b. Misuse of power or authority;
- c. Destruction or loss of assets or resources;
- d. Failure to comply with applicable accounting requirements;
- e. Failure to protect documentation;
- f. Failure to safeguard confidential information.

1.12.2. Compensation to the State

Provisions which require those who bring harm to the public treasury because of corrupt practices related to assets or resources entrusted to them in the performance of public functions, to compensate the State for the damages that have been caused.

1.12.3. Enforcement Mechanisms

Provisions which establish measures to ensure that the State is compensated when harm is caused to the public treasury, due to the failure of those who perform public functions to properly conserve and use the resources entrusted to them, such as:

- a. Requirement of insurance or bonds;
- b. Criminal and civil liability;
- c. Freezing and/or confiscation of assets.