

DRAFT LEGISLATIVE GUIDELINE: BASIC ELEMENTS REGARDING OVERSIGHT BODIES

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INTRODUCTION

This guideline focuses on basic elements that should be considered in norms governing the establishment and operation of oversight bodies in a particular country with a view to ensuring effective measures and action to prevent, detect, and punish acts of corruption set forth in the Convention. This guideline will thus address oversight bodies in general as well as those with specific responsibilities in criminal, fiscal, disciplinary, and various other matters.

Furthermore, as suggested by its title, the elements covered in this guideline are the basic of any legal framework of this nature. The list does not therefore purport to be exhaustive.

1. OVERSIGHT BODIES

Provisions establishing oversight bodies or granting additional powers for existing bodies to undertake functions related to:

- a) Determination of criminal responsibility in cases of corruption cases, including investigation and prosecution of acts of corruption that fall under the category of crimes or offenses.
- b) Evaluation, examination or audit of the use of public funds and determination of pecuniary or financial liability in cases of corruption, meaning the obligation of guilty parties to repay the public treasury for the loss resulting from the corrupt acts.
- c) Conducting investigations or imposing administrative or disciplinary sanctions to anyone found to have engaged in any administrative violation covered under the regulations on corrupt acts.

2. AUTONOMY OF OVERSIGHT BODIES

Provisions establishing that all oversight bodies responsible for cases of corruption are autonomous and functionally independent to carry out their duties vis-à-vis other state agencies.

3. AUTHORITIES

Provisions clearly establishing how authorities are appointed or elected to oversight bodies, with the following elements as minimum points of reference:

- a) Who appoints them;
- b) Whether they are appointed to fixed terms or can be freely removed; and
- c) What competent body can hold them accountable for their actions and decide whether they continue in office.

4. RESOURCES

4.1. Financial

Provisions that ensure that oversight bodies are adequately provided with:

- a) The financial resources for them to fully carry out their duties;
- b) The necessary autonomy to administer such resources; and

- c) The competent authority for supervising their proper use.

4.2. Human

Provisions that ensure that oversight bodies are adequately provided with:

- a) A human resources management system that matches personnel for their duties based on demonstrated qualifications, meritorious performance, and the needs of the service; and
- b) The competent authority to be in charge of staff selection procedures, who would operate with the independence and objectivity required by an oversight body.

5. INTERNAL CONTROL STRUCTURE AND MECHANISMS

5.1. Organizational structure

Provisions to ensure that oversight bodies have an administrative structure with the offices or institutions needed for them to carry out their functions, with powers and responsibilities appropriately distributed among them.

5.2. Internal control mechanisms

Provisions establishing mechanisms for internal control and to handle complaints and appeals for monitoring the operation of the organization and take corrective measures as required.

6. ACCOUNTABILITY

Provisions setting out how control bodies report to the public about their mission, goals, and objectives; how they report to the public about activities undertaken; how reports on these activities are to be published; as well as the development and application of indicators to measure and publish the outcomes.

7. COMPETENCE

Provisions covering, among others:

- a) The competence of the oversight bodies in criminal, pecuniary or financial, and administrative matters, among others, to ensure that all public servants are subject to the jurisdiction of a general or specific oversight body in each of these areas.
- b) The competence of the oversight bodies in criminal, pecuniary or financial, and administrative matters, among others, to ensure that all individuals responsible for managing public resources are subject to the jurisdiction of a general or specific oversight body in each of these areas.
- c) Preventing anyone from evading liability for acts of corruption by invoking objections based on such factors as a public servant's rank; the military, political, diplomatic or any other type of functions he or she performs; or an individual's place of service or nationality which confer immunity or special jurisdictions so that these bodies lose their authority to investigate or criminally punish such acts.

8. COORDINATION MECHANISMS

Provisions establishing mechanisms to facilitate institutional coordination among various oversight bodies as well as ongoing evaluation and monitoring of their performance.