

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Twenty-first Meeting of the Committee of Experts
March 18-22, 2013
Washington, D.C.

OEA/Ser.L
SG/MESICIC/doc.344/12 rev. 2
22 March 2013
Original: Spanish

MODEL LAW
ON THE DECLARATION OF INTERESTS, INCOME, ASSETS AND LIABILITIES OF
PERSONS PERFORMING PUBLIC FUNCTIONS*

CHAPTER I
PURPOSE AND TERMS USED

Purpose

Article 1. This law, regulating article [...] of the national constitution/political constitution of the state¹ pursuant to article III (4) of the Inter-American Convention against Corruption, establishes the system of declarations of interests, income, assets and liabilities of persons performing public functions, for the following purposes:

- (a) To detect and verify significant and unjustified changes in assets of obligated persons and to initiate the corresponding administrative and criminal procedures established by law; and
- (b) To detect and prevent conflicts of interests.

Terms used

Article 2. For purposes of this law:

- (a) “Public function” means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy.
- (b) “Public official”, “government official”, or “public servant” means any official or employee of the State or its agencies, including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy.

* This Model Law is the result of an extensive consultation process carried out in the framework of a cooperation program developed by the OAS General Secretariat, through the Department of Legal Cooperation of the Secretariat for Legal Affairs in its capacity as Technical Secretariat of the MESICIC, which, with the support of an international consultant in drafting the first version, was discussed at a workshop held in Buenos Aires in May 2011, with the participation of officials from Argentina, Brazil, Chile, Colombia, Spain, the United States and Mexico, as well as the World Bank. The results of this workshop were presented at the Second Conference on the Progress and Challenges in Hemispheric Cooperation against Corruption, held in Cali, Colombia, in June the same year. This Model Law was later brought to the consideration of the members of the Committee of Experts of the MESICIC and civil society organizations for their comments and observations, which are incorporated in this latest version and endorsed by the Committee, at the March 22, 2013 plenary session, within the framework of the Twentieth First Meeting of the Committee, held at OAS headquarters in Washington, D.C., from March 18 to 22, 2013.

1. For those states where the political constitution requires public officials to declare their interests, income, assets and liabilities.

- (c) “Property” means assets of any kind, whether real or personal, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate, or relating to ownership or other rights pertaining to such assets.
- (d) “Obligated person” means any person required by article 3 of this law to present a declaration of interests, income, assets and liabilities.
- (e) “Family group” means the spouse, partner, minor or dependent children and persons under the guardianship or custody of the obligated person.

CHAPTER II

OBLIGATED PERSONS AND THE OBLIGATION TO FILE A DECLARATION

Obligated persons

Article 3. Persons who perform the functions detailed below are considered obligated persons under this law.

- (a) President and Vice President of the Nation (Head of Government, Deputy Head of Government).
- (b) Chief of staff of Ministers, Ministers, Secretaries and Undersecretaries of the Executive Branch.
- (c) Members of the diplomatic corps at and above the rank of [...].
- (d) Rectors, deans, secretaries, employees of public universities at and above the rank of [...].
- (e) Directors and senior officials of State corporations and corporations in which the State has an equity interest
- (f) Officials and employees of the public administration at and above the rank of [...].
- (g) Officials and employees with responsibilities for granting administrative authorizations or exercising the police power at and above the rank of [...].
- (h) Officials and employees responsible for public procurement and contracting at and above the rank of [...].
- (i) Officials and employees of tax collection offices at and above the rank of [...].
- (j) Officials and employees of the customs administration at and above the rank of [...].
- (k) Officials and employees of the armed forces and security services at and above the rank of [...].
- (l) Legislators [National Senators and Deputies].
- (m) Officials and employees of the legislative branch at and above the rank of [...].
- (n) Magistrates or judges, court secretaries.

- (o) Officials and employees of the judicial branch at and above the rank of [...].
- (p) Members of bodies for the selection and trial of magistrates, up to the rank of [...].
- (q) Officials and employees of the Attorney General's office at and above the rank of [...].
- (r) Officials and employees of the office of the Public Defender and/or Ombudsman at and above the rank of [...].
- (s) Officials and employees of internal and external control bodies, regulatory bodies and supervisory authorities at and above the rank of [...].
- (t) Officials and employees of the Central Bank exercising monetary authority of the Nation at and above the rank of [...].
- (u) Officials and employees of the official system of banks and financial institutions at and above the rank of [...].
- (v) Officials and employees of agencies or entities with responsibilities for administering a public or private property for the State or for controlling or auditing public revenues of whatever nature..
- (w) Persons who provide regular advisory services to obligated persons, permanently or temporarily, under any employment or contractual arrangement.

The competent authority may establish general criteria of application to determine the scope of the categories established in this article.

Occasion for the presentation of declarations

Article 4. Obligated persons shall present their declaration of interests, income, assets and liabilities on the following occasions:

- (a) **Upon commencement:** within 30 days after appointment.
- (b) **Updating:**, annually, on the date determined by the competent authority.
- (c) **Upon conclusion:** within 30 days of concluding the performance of public functions.
- (d) One year after having carried out public function.

Contents of the declaration

Article 5. The declaration of interests, income, assets and liabilities must contain, as a minimum, the following information:

- (a) Full details on the obligated person, indicating that person's identity document, taxation and/or labor documentation and civil status, occupation and function performed, and the state body or state-owned corporation in which that function is performed.

- (b) The date and place for presentation of the declaration of interests, income, assets and liabilities.
- (c) Detailed information on the persons who make up the family group, indicating their identity document, taxation and/or labor documentation, if any, and civil status. In each case, it must specify their occupation or activity.
- (d) Details of real property of any kind, located within the country or abroad, held in ownership, co-ownership, community of property, fiduciary property, any other form of ownership or lease, and significant improvements that have been made to such property. The form must indicate the address, location, registration identification, percentage, liens, date of acquisition, value paid at that date, and source of funds used for each acquisition made subsequent to appointment.
- (e) Detail of registered personal property of any kind, located within the country or abroad, held in ownership, co-ownership, community of property, and any other form of ownership. The form must record their type, trademark, model, year of manufacture, and identification numbers; registration data, date of acquisition, value paid at that date, and the origin of the funds used for each purchase made subsequent to appointment.
- (f) Details of other personal property, where the market purchase value exceeds [...]. The record must show the date of purchase, the value and currency paid at that date, and the origin of the funds used for each purchase made subsequent to appointment.
- (g) Details on capital invested in securities, shares and other instruments, whether or not tradable in the country or abroad. The form must indicate the security or instrument representing the value, its registration number, the date of issuance, the issuer, and the quantity, determined or capable of determination, which it represents in legal currency on the date of the declaration; the date of acquisition, the value paid on that date, and the source of the funds used at each acquisition that takes place subsequent to the appointment.
- (h) Details of rights in communal, personal or corporate undertakings, constituted in the country or abroad, either in administration or in capital. The form must identify the name, corporate purpose, tax identification of the company, percentage and nature of rights of the obligated person, and identification of any related natural or legal person through which the interest is held. It must also indicate the date of acquisition of each right, the value paid at that date, and the origin of the funds used for each acquisition made subsequent to the appointment of the obligated person.
- (i) Details of participation on boards of directors, administrative and supervisory boards, advisory boards, or any collegial board, whether remunerated or honorary.
- (j) Indication of the balance of accounts and other financial products in banks or other financial institutions, national or foreign, and cash holdings in national or foreign currency. It must indicate the name of the bank or financial institution in question.

- (k) Listing of mortgages, pledges or common loans and debts, indicating their component obligations and the type of obligation, the debtor or creditor and the amount owed.^{2/}
- (l) Annual income derived from the position for which the declaration is made as well as from other activities, work in a relationship of dependency or the exercise of independent or professional activities.
- (m) Annual income and outlays related to pensions and social security systems.
- (n) Details of other property, either real or personal, including securities, that is held by a third party in part or in full for the benefit of the obligated person, the name of the third party, the date the property was acquired and how it was acquired, the value of the property on the date it was acquired, the current value and any income or payments made to the obligated person based on that property.
- (o) Identification of any public posts or positions held by the obligated person, paid or honorary, as director, employee, consultant or representative of any commercial or nonprofit undertaking, specifying the organization contracting the official. In the case of a declaration upon commencement, the information must cover the two years immediately preceding the declaration. In the case of updates, the information shall cover the year prior to the declaration.
- (p) Identification and brief description of the gifts, including travel and other activities that are used instantly, received as a product of or as a result of the position, the approximate value of which exceeds the equivalent of [\$...]^{3/}
- (q) Express declaration that the data and background provided are truthful and accurate.
- (r) Express declaration that no relevant properties or data have been omitted.
- (s) Identification of the private organizations (political party affiliations, associations) that a public official has participated in, from at least 3 years preceding the time the declaration is submitted.

Article 6. Subsections d) to n) of the preceding article must include information relating to the family group of the obligated person.

Procedures for presenting the declaration

Article 7. The competent authority shall make available to obligated persons the electronic means for completing the declaration of interests, income, assets and liabilities and the remote means of electronic communication for submitting it together with secure electronic identification of the obligated person.

2. Credit cards are included within credits.

3. The MODEL LAW does not a specific legal regime on gifts, courtesy travel or entertainment, which are usually subject to a specific regulation.

Article 8. Obligated persons shall use a confidential annex, which the competent authority must supply, to provide the information that allows location of the property or properties declared in subsection (d) of article 5 and the numbers of the current accounts, savings accounts, safety deposit boxes and credit cards declared pursuant to subsections (j) and (k) of article 6.

Article 9. In no case may declarations of interests, income, assets and liabilities be submitted in handwritten form.

Article 10. Presentation of the declaration of interests, income, assets and liabilities may be submitted in printed form only when the technological means available within the territorial jurisdiction in which the obligated person performs his or her duties do not permit otherwise.

Article 11. The declarations of interests, income, assets and liabilities shall have evidentiary value when they have been duly issued by the competent authority.

CHAPTER III COMPETENT AUTHORITIES^{4/}

Article 12. The competent authority shall enjoy functional and budgetary independence and shall establish procedures for contracting its personnel so as to guarantee, in particular, their suitability for performing its functions.

Article 13. The competent authority shall have the following obligations:

- (a) To determine the universe of obligated persons under its sphere of competence, for which purpose it must create a database, to be kept permanently updated. The database must be designed so as to permit periodic incorporation of at least the following information:
 1. Appointment and contracting of obligated persons within its sphere of competence.
 2. Appointments and concluded contracts.
 3. Transfers from one public function to another.
 4. Creation of new positions or functions with ranks or hierarchies included within the categories of obligated persons established by article 3.
 5. Deletion of positions or functions with ranks or hierarchies included within the categories of obligated persons established by article 3.

4. With due regard to their constitutional structure, the members of MESICIC have adopted two different models with respect to the authorities competent for administering declarations of interests, income, assets and liabilities. In general, countries that have an independent body with constitutionally established powers to oversee public officials in all branches of government have appointed that body as the competent authority for analyzing and verifying the DIAs. On the other hand, countries where the internal control system is organized through cross control among branches – usually between the executive and the legislative branches – have appointed a competent authority within each branch to analyze and verify the DIAs. The members of MESICIC also vary with respect to the authorities responsible for receiving the DIAs. In some countries, these are submitted directly to the authorities who also conduct verification. In other countries, reception of the DIAs has been decentralized to bodies within each public agency responsible for human resources or personnel administration. In light of these differences and the impossibility of capturing them all in the model Law, the model has confined itself to using the term "competent authorities" to refer to the different functions that these authorities must fulfill.

- (b) To receive declarations of interests, income, assets and liabilities. In the of declarations presented in printed format, pursuant to Article 10, to ensure as well that they are complete
- (c) To establish consultation mechanisms via electronic means or telephone, whereby obligated persons may clarify any doubts as to their obligations under this law.
- (d) To determine, within 15 days after the deadline for presenting a declaration of interests, income, assets and liabilities, the universe of obligated persons who are in default of that obligation, to issue warnings to those persons to comply, and to advise the competent authorities of the universe of persons in default for purposes of chapter VIII.
- (e) To determine annually the criteria for selecting, from the universe of obligated persons, the declarations of interests, income, assets and liabilities that will be subject to verification and review for the purposes set out in Article 1 of this Law. Those criteria shall be objective and guided by the standards of impartiality, and any changes must be explained in the annual report stipulated in subsection (k) of this article.
- (f) To design and carry out plans to publicize and promote the objectives and purposes of the obligations created by this law, both among the obligated persons and among the general public.
- (g) To conduct the verification and review procedures stipulated in chapters IV and V of this law.
- (h) To establish cooperation agreements with public or private entities that administer public information for the purpose of facilitating unrestricted and immediate access to all information of a public nature. In the case of automated databases, the agreement shall establish the means necessary for the competent authority to gain remote access to databases.
- (i) To establish cooperation agreements with public entities that administer privileged [banking or taxation] information for the purpose of facilitating access to specific information required for conducting concrete verifications of obligated persons. When this is not possible, entities that administer privileged information must find the means necessary to carry out, within a period not to exceed [...] days, consultations by the competent authorities to confirm the truthfulness of the information contained in the declarations of interests, income, assets and liabilities.
- (j) To create and keep updated the public registry of declarations of interests, income, assets and liabilities, in accordance with the specifications of Chapter VI of this law.
- (k) To present an annual activities report to the national Congress that includes an analysis of the results obtained from the declarations of interests, income, assets and liabilities, which shall be public and accessible electronically.
- (l) To regulate, within the limits of its competence, the scope of application of this law.
- (m) Establish mechanisms to encourage participation by civil society.

CHAPTER IV VERIFICATION PROCEDURES

Article 14. Verification procedures shall be intended to determine, in a preliminary way, any significant and unjustified changes in the assets of the obligated person and/or his or her family group. Consequently, they shall determine:

- (a) The truthfulness of the information declared by the obligated person.
- (b) The origin of the properties incorporated into the assets of the obligated person and his or her family group in the period of analysis of the verification.
- (c) Whether the change in the assets of the obligated person and his or her family group, in relation to the most recent declaration of interests, income, assets and liabilities, is consistent with their legitimate incomes.

Article 15. In addition to those based on the comparison between declarations of interests, income, assets and liabilities corresponding to different periods, verification procedures may be initiated upon complaints from private individuals or ex officio, based on public information.

Article 16. The competent authority shall have the power to request reports, documents, background and any other element it deems necessary from any public agency [national, provincial or municipal] and from any natural or legal person, public or private, all of which are obliged to provide such elements within the time limit established by the competent authority, under penalty of law.

Article 17. The procedure may include the verification of undeclared properties which the competent authority has sufficient grounds to believe are under the de facto control of the obligated person. For this purpose, it may investigate the origin of the assets with which their owners have effected the acquisition. The competent authority may also establish procedures through which it can obtain information from foreign banks, legal persons, and governments if assets are held in foreign banks or abroad.

Article 18. When the verification procedure provides indications sufficient:

- (a) To raise doubts about the legitimate origin of the change in the assets of the obligated person or his or her family group; or
- (b) To presume that there are undeclared properties under the control of the obligated person or his or her family group;

The competent authority may summon the obligated person to provide such explanations as it deems pertinent and such evidence as it deems necessary to substantiate those explanations.

Article 19. The competent authority shall verify the explanations given by the obligated person and, if they are not satisfactory, or when the obligated person has opted not to provide them, the competent authority shall initiate the appropriate criminal or administrative actions..

CHAPTER V PROCEDURE FOR REVIEWING CONFLICTS OF INTEREST

Article 20. The purpose of the procedure for reviewing conflicts of interest shall be to determine if the interests declared by the obligated person are compatible with the exercise of his or her functions, in accordance with the rules governing conflict of interest, incompatibilities, disqualifications or other duties established by law.

Article 21. When the review of the declarations of interests, income, assets and liabilities provides indications of a potential or actual conflict of interest, or of actual or potential violations of the rules governing incompatibilities, disqualifications, or other legal or regulatory duties established for the fulfillment of public functions, the competent authority shall notify the obligated person and the agency in which that person performs his or her functions, advising them of its opinion and the steps to be taken in accordance with the respective legislation in order to prevent a potential conflict or to terminate an actual conflict.

CHAPTER VI PUBLIC REGISTRY OF DECLARATIONS OF INTERESTS, INCOME, ASSETS AND LIABILITIES

Article 22. The competent authority shall create a public registry of declarations of interests, income, assets and liabilities, which shall allow unrestricted access for any person to the following information.^{5/}

- (a) List of obligated persons covered by article 3, indicating those who have fulfilled their obligation on time, those who have had to be issued summonses to comply pursuant to article 13 (d) and those who have not complied with their obligation.
- (b) Income, asset and liability declaration forms presented on each occasion, within 15 days of their presentation, with the exception of the confidential annexes referred to in article 8.
- (c) List of obligated persons subjected to disciplinary, administrative or criminal penalties, with an indication of the penalty applied.
- (d) List of obligated persons whose review procedure has concluded with the adoption of measures to avoid or terminate a conflict of interest under the terms of article 21, with indication of the measures adopted.

Article 23. The competent authority shall guarantee free access for all persons to the information contained in the public registry referred to in the previous article, which may be consulted in person or by remote electronic communication means. [In cases of public officials up to the post of [...], the declarations should be made available on the Internet.]

5. Convinced of the benefits that making the DIALs public can generate for democratic harmony, the Model Law has opted for a system of unrestricted access to all information contained in the declaration, while recognizing that article III (4) of the Convention accepts the qualifier "where appropriate" for such publicity, and that some members of MESICIC apply restrictions in interpretation of the constitutionally ordained right to privacy.

Article 24. The person accessing a declaration of interests, income, assets and liabilities may not use it for:

- (a) Any illegal purpose.
- (b) Any commercial purpose, except by the communications and news media for the information of the general public.
- (c) To determine or establish the credit rating of any individual.
- (d) To solicit, directly or indirectly, money for political, charitable or other purposes.

Any prohibited use of a declaration of interests, income, assets and liabilities shall be punishable by a fine of [...] to [...], without prejudice to civil or criminal liability for unlawful use.

Article 25. The competent authorities shall ensure broad publicity for the prohibited uses of declarations of interests, income, assets and liabilities and for the penalties provided for such cases. The competent authority shall not be held responsible for any improper use of declarations of interests, income, assets and liabilities on the part of third parties.

CHAPTER VII CUSTODY, PRESERVATION AND SECURITY

Article 26. Declarations of interests, income, assets and liabilities must be kept for a term of [...] years after the obligated person has concluded his or her functions. If the obligated person or members of his or her family group are facing criminal or administrative charges for having participated in acts against the administration or the public interest, the declarations of interests, income, assets and liabilities shall be kept until all proceedings related to those acts are concluded or for the maximum statutory limitation for the most serious offense against the public administration, whichever is greater.

Article 27. Declarations of interests, income, assets and liabilities submitted in printed format shall be indexed in an electronic index that will allow them to be physically located and the declarer to be identified.

Article 28. The competent authority shall be responsible for the conditions of archiving, security and maintenance of declarations of interests, income, assets and liabilities.

CHAPTER VIII PENALTIES

Administrative penalties

Article 29. Obligated persons who have not filed their declaration of interests, income, assets and liabilities by the end of the period stipulated for any of the occasions covered by article 4, shall be issued a summons pursuant to article 13 (d). That summons shall remain on the dossier of the official, unless that person has violated other legal provisions.

Article 30. Obligated persons who, having received a summons pursuant to article 13 (d), fail to present the declaration of interests, income, assets and liabilities within the time limit indicated in the summons, shall be punished with a fine not to exceed [...] and suspension from the performance of public functions for a period not to exceed [...] months, in accordance with existing disciplinary procedures if any.

Article 31. Obligated persons who enter false data in their declaration of interests, income, assets and liabilities, on any of the occasions covered by article 4, shall be punished with a fine not to exceed [...] and suspension from exercising public function for a period not to exceed [...] months, in accordance with existing disciplinary procedures. The administrative penalty shall be applied independent of any applicable criminal penalties.

Article 32. Repeated failures on more than [...] opportunities to present the declaration interests, income, assets and liabilities, within the time limit indicated in the summons issued for any of the occasions indicated in article 4 shall be grounds for dismissal, when such penalty is applicable in accordance with existing disciplinary procedures.

Article 33. The punishable conduct defined in articles 30, 31 and 32 is deemed committed when, after due notification of summons, the obligated person has not fulfilled the duties in question within the time limits fixed by the competent authority.

Article 34. Authorities who, by failing to fulfill any legal obligation or duty, have slowed, obstructed or impeded fulfillment of the obligations of the competent authority shall be punished by a fine of no less than [...] and not to exceed [...].

Article 35. Officials and employees of the competent authority who fail to fulfill the obligations imposed by this law shall be punished by a fine not to exceed [...].

Criminal penalties

Article 36. Article [...] of the criminal code is amended as follows:

“Any person who by reason of his or her position is obliged by law to submit a declaration of interests, income, assets and liabilities and who fails to do so or who falsifies or omits data which such declarations must contain in accordance with applicable laws and regulations shall be punished by imprisonment of [...] days to [...] years and special perpetual disqualification.”

CHAPTER IX FINAL PROVISIONS

Federal clause

Article 37. The competent authority shall see to arrangements whereby the federal states adopt systems of declarations of interests, income, assets and liabilities that do not differ essentially from those established in this law and those needed for the competent authorities to access the necessary information during verification and review procedures.