MANAGING CONFLICTS OF INTEREST IN THE PUBLIC SERVICE

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MAIN ISSUES

A growing public concern

1. Conflicts of interest have become a key issue in public debate. In the private sector, recent scandals have drawn attention world-wide to the importance of avoiding conflicts of interest when, for example, an accounting firm offers both auditing and consulting services to the same client.

2. An increasingly close relationship has developed between the public sector and the business and non-profit sectors, giving rise to new forms of partnerships, interchanges of personnel, and sponsorships. There is clearly an emerging potential for new forms of conflict between individual private interests and public duties. Growing public concern has placed pressure on governments to ensure that mechanisms are in place to protect the integrity of official decision making against erosion by a public official’s private interest.

3. There is increasing recognition that conflicts between the private interests and public duties of public officials can result in corruption if inadequately managed. The proper objective of an effective conflict-of-interest policy is not the prohibition of all private capacity interests, even if such an approach were feasible. It is rather to maintain a merited public confidence in the integrity of official decision making and public management. In general, this objective can be achieved by ensuring that public bodies possess and implement appropriate policy standards and processes for identifying and dealing with conflicts, and that public officials take personal responsibility for complying with such standards.

Solutions for managing conflicts of interest

4. In a rapidly evolving public sector environment, conflicts of interest can never be fully eliminated. As excessive restrictions may deter qualified professionals from accepting public office, a modern conflict-of-interest policy seeks to strike a balance, by identifying and preventing unacceptable forms of conflict, making public organisations aware of their presence, and ensuring effective disclosure and resolution to diminish their consequences.

5. The draft Guidelines for Managing Conflicts of Interest is designed to provide a framework of reference for reviewing existing solutions and modernising administrative mechanisms in line with practices that have proved effective in OECD countries. These Guidelines aim to help governments develop a modern conflict-of-interest policy that meets current public expectations, and also initiate policy that will minimise conflicts of interest when dealing with the business and non-profit sectors.

Questions

• What are the major challenges in managing conflicts of interest in your country? What are the principal risk factors in implementing related policy in public organisations?

• What situations have the potential to produce significant conflicts of interest? What are the emerging areas?

• What measures/mechanisms work well in recognising and resolving potential and actual conflicts? How can governments involve the business and non-profit sectors in the prevention and resolution of conflicts of interest?

• What are the recent developments in conflict-of-interest policy? What measures are planned for the future?
DRAFT OECD GUIDELINES FOR MANAGING CONFLICTS OF INTEREST
IN THE PUBLIC SERVICE

Introduction

6. Serving the public interest is the fundamental mission of governments and public institutions. Citizens expect individual public officials to perform their duties in a fair and unbiased way. In addition, governments are increasingly expected to ensure that public officials do not allow their private interests and affiliations to corrupt official decision making and public management.

7. In particular, in countries where there is an increasingly close relationship between the public sector on the one hand and the business and non-profit sectors on the other, there is growing concern to ensure that the integrity of official decision making is not compromised by unresolved conflicts of interest.

Defining conflict of interest

8. Conflict of interest involves a situation in which an official’s private interests -- not necessarily limited to his/her financial interests -- and the official duties in his/her public function are in conflict (actual conflict of interest), could come into conflict, or could reasonably appear to be in conflict (potential conflict of interest).

9. In an increasingly demanding society, a conflict becomes unacceptable when it appears that a private interest could improperly influence an official's performance of his/her official duty. Such conflicts of interest weaken the ideal of fairness and impartiality in public decision making, distort the allocation of public resources and undermine the proper functioning of democratic governments and the rule of law by weakening citizens' trust in government.

Aims of Guidelines

10. The Guidelines aim to:

   • Help governments develop a modern conflict-of-interest policy that fosters public confidence in the integrity of public officials and public decision-making.
   • Create a framework of reference for reviewing existing solutions and modernising mechanisms in line with good practices in OECD countries.
   • Promote a public service culture where conflict-of-interest situations are properly identified and resolved or managed in a transparent and timely way without inhibiting the effectiveness and efficiency of the organisations concerned.
   • Provide practical means to help public organisations manage conflict-of-interest policy and procedures effectively.
   • Support partnerships between the public sector and the business and non-profit sectors, in accordance with clear public standards defining the parties' expected roles and responsibilities so that individual and institutional conflicts of interest are avoided.
11. The primary aim of the Guidelines is to help central governments review their existing conflict-of-interest policy for public officials -- including public servants and holders of public office -- working in the national or federal public administration. Moreover, they can also provide guidance for other branches of government, sub-national levels of government and state-owned corporations.

Core principles for managing conflicts of interest

12. In the interests of maintaining public confidence -- the overall objective of the conflict-of-interest policy -- public officials are requested to observe in particular the following core principles to ensure impartiality, fairness and objectivity in their official performance:

**Serving the public interest**

- By making decisions in the public interest on the basis of the merits of each case and by avoiding any preferential treatment. It is also crucial that decision making and the application of policy in individual cases are not affected by any political affiliations of either the decision maker or the person affected by the decision.
- By limiting private interests that would unduly affect public decisions in which they participate.
- By remaining vigilant when public officials favour private entities or persons in their dealings with public institutions.
- By abstaining from government actions when the official's private interests and affiliations conflict with official duties; the extent of that conflict may require elimination of the interest or affiliation.
- By not taking any advantage of inside information obtained in the course of official duties and responsibilities and that is not generally available to the public.
- By not soliciting or accepting improper benefit of any kind to influence the performance (or non-performance) of official duties (other than incidental gifts, customary hospitality and other benefits of nominal value offered and accepted in accordance with a country's cultural-administrative milieu).
- By avoiding the use of public office and government resources for private gain.
- By behaving in such a way as to serve as an example, earning respect and maintaining public confidence.
- By refraining from taking improper advantage of an office held previously.

**Supporting transparency and public scrutiny**

- By identifying and disclosing information about private interests and affiliations that could create an actual or potential conflict with the disinterested performance of public duties.
- By ensuring openness in the process to resolve or manage a conflict-of-interest situation.
- By acknowledging that public officials are expected to act in a manner that will bear the closest public scrutiny. This obligation is not fully discharged simply by acting within the law; it also entails respecting core public service values such as impartiality and integrity in day-to-day work.
- By promoting open, public processes that lead to government decisions
- By promoting free access to public information to facilitate public scrutiny within any applicable legal framework.
Promoting individual responsibility and personal example

- By accepting responsibility for arranging private affairs in a manner that will prevent conflicts of interest arising on appointment to office and thereafter.
- By accepting responsibility for resolving the conflict in favour of the public interest when a conflict does arise between private interests and the official functions and duties of public officials.
- By demonstrating the commitment of public officials to public service integrity and professionalism through personal example.

Engendering a supportive organisational culture

- By providing adequate and proper processes, policies and practices in the working environment for public officials to disclose and discuss conflicts of interest.
- By creating and sustaining a culture of open communication and interactive dialogue between managers and public officials.
- By providing guidance and training to promote the understanding and dynamic evolution of an organisation's rules and procedures and their application to specific working situations.

Key functions for managing conflicts of interest

13. A modern conflict-of-interest policy should include a set of comprehensive measures that put into practice the core principles stated above. These measures should mutually reinforce each other to provide coherent mechanisms for managing conflicts of interest. The key functions of these mechanisms are to:

- **Define** the general features of significant conflicts of interest.
- **Identify** specific occurrences of unacceptable conflict-of-interest situations.
- **Raise awareness** that assists compliance, and **anticipate** risk areas for prevention.
- Ensure **disclosure** and proper **management** of conflicts that do occur.
- **Assess** implementation of conflict-of-interest policy, and **adjust** policy and procedural mechanisms as necessary to meet evolving situations.
GUIDELINES FOR MANAGING CONFLICTS OF INTEREST

1. Developing a Strategy: Laws and Rules

Defining unacceptable conflicts of interest is an essential part of the political, administrative and cultural context of a country. The Guidelines are designed as a reference tool with which policy makers can a) review key components of existing mechanisms and b) harmonise the measures necessary for a modern conflict-of-interest policy that meets expectations in a rapidly changing socio-economic environment.

1.1. Define potential conflict-of-interest situations

1.1.1. Provide a clear and realistic definition of what circumstances and relationships can lead to a conflict-of-interest situation when performing official duties.

a) The definition of conflict of interest should include a general description of the overall principle: there are situations in which the private interests and affiliations of an official create, or have the potential to create, conflict with the proper performance of his/her official duties. The definition should emphasise the overall aim of the policy -- fostering trust in government -- and also make it clear that unresolved conflicts of interest can amount to corruption.

b) The definition should make it clear that while conflicts of interest may be unavoidable in practice, management must recognise those prohibited situations and activities that are incompatible with the public function. Public confidence in the impartiality of officials executing public functions could be damaged if the conflict remains unresolved.

c) In addition to the general description, the definition should specify types of private interests: financial and economic interests, affiliations with for-profit and non-profit organisations, and other personal interests, undertakings and relationships, such as obligations to community groups in either a personal or professional capacity. It should illustrate these circumstances and relationships with cases, and demonstrate acceptable ways of resolving or avoiding these conflicts.

d) The definition should also describe in what context the private interests of close family members (and of people living in the same household) should be considered.

e) In addition to the general definition applicable for the entire public service, more specific standards and tailored requirements should be set forth for those groups that are working in exposed areas, such as the public-private sector interface or elected bodies and organisations under close public or media scrutiny.
1.1.2. Ensure that the principles and rules of a conflict-of-interest policy are accompanied by sufficient practical examples for identifying and resolving or managing conflict-of-interest situations.

a) Laws and codes, as primary sources, should set forth the definitions, principles and essential requirements of the conflict-of-interest policy.

b) In addition, guidelines and training materials, as well as counselling, should provide practical examples of concrete steps to be taken for resolving conflicts of interest, especially in evolving and "grey" areas such as private-sector sponsorships, privatisation and deregulation programmes, NGO relations, political activity, public-private partnerships and interchanges of personnel between sectors.

1.2. Establish procedures for resolving conflict-of-interest situations

1.2.1. Set clear rules on what is expected of public officials in order to declare and resolve or manage potential conflicting situations in favour of the public interest.

a) Registration and declaration of private interests. Public officials must be required to take all reasonable steps to identify and register their relevant private interests as required, and to declare immediately when a conflict of interest arises between their private interests and official duties. However, the declaration of a private interest does not in itself resolve a conflict. Additional measures should be considered when a conflict appears, such as public disclosure of registered interests, divestment, transfer of duty or resignation.

b) Divestment. Officials should be required to dispose of a conflicting interest (for example by selling shares, liquidating investments, or creating blind trust assignment of pecuniary interests). Other, "arm's-length" management arrangements should be made in cases where it would be unreasonable to expect an official to dispose of an asset or interest.

c) Transfer of duty. In cases where no other means of resolving a conflict of interest is available, officials should be required to agree to be assigned to a new position, or maintain their current position but not participate in the decision making process on the affected matters – for example by abstaining from voting, withdrawing from discussion of affected proposals and plans, or not receiving relevant documents and other information relating to their private interest.

d) Increased transparency and scrutiny of measures for declaring and resolving or managing conflict. Declarations of private interest as well as the arrangements for resolving conflicts should be clearly stated in written documents and made available for public scrutiny (for example requiring that the disclosure of private interests and follow-up steps be recorded in the minutes of a meeting).

e) Resignation. Public officials can be required to resign from their conflicting private position if they wish to keep their public office. When the public official does not resign from a private position that give rise to unavoidable, serious and pervasive conflict with their official duties, and the conflict cannot be resolved in any other way, the conflict-of-interest policy should provide that their official position can be terminated in a given period.
1.2.2. Ensure that public officials declare any private interest that may unduly influence their performance as public officials.

a) Initial disclosure on appointment -- Develop mechanisms that demonstrate whether public officials, when they take up office, properly identify and disclose any private interests that potentially conflict with their official duties.

b) In-service disclosure -- Make public officials aware that they must promptly disclose all relevant information when circumstances change after their initial disclosure has been made, or new facts come to light.

c) Completeness of disclosure -- Verify whether disclosures contain sufficient detail on the conflicting interest to enable the manager or immediate superior to consider and determine the most appropriate course of action to be taken in the circumstances.

d) Disclosure process -- Ensure that the administrative process assists full disclosure, and that the information disclosed is properly verified, assessed, and maintained in up-to-date form. Ensure that failure to disclose relevant information as required is identified and addressed.

2. Implementing the Strategy

Although it is the responsibility of individual public officials to be aware of possible conflicts, public organisations should also assess the areas where conflicts of interest are likely to arise and foresee potential effects, in order to improve the organisational mechanisms for safeguarding integrity.

2.1. Demonstrating the leading role of senior officials

Exemplary role of senior officials -- Senior officials, particularly managers, should perform their official duties and arrange their private affairs in a manner that preserves and reinforces public confidence in their own integrity and the integrity of their organisation. They should be expected to meet standards of conduct that will withstand the closest inspection.

2.1.1. Ensure that managers know they are responsible for the accurate and fair application of the conflict-of-interest policy within their areas.

a) Upgrading the management framework -- Managers have the primary responsibility for ensuring the proper functioning of systems in place for recognising and resolving or managing conflict-of-interest situations. They should also ensure that these systems are upgraded to avoid potential or anticipated conflicts in a permanently evolving environment.

b) Deciding in individual cases -- Managers must be prepared to exercise appropriate judgement when their subordinates disclose private interests that are in conflict with their public duties. They should consider whether citizens, looking at the relevant facts and circumstances, would think that there is a real possibility of conflict. Managers should adequately weigh the interests of the organisation, the public interest, and the interest of the employee, as well as other facts -- including the seniority and type of position the official holds -- when determining the most appropriate solution to resolve or manage the actual conflicting situation.
2.2. Creating a partnership with employees: awareness, information, anticipation and prevention

2.2.1. Ensure that public officials are aware of the conflict-of-interest policy, and in particular that they know how the rules are applied in the organisation and what their own responsibilities are.

a) **Provide a policy statement** -- Give all new public officials, upon their appointment, a clear and concise statement of the core principles of the conflict-of-interest policy, and regularly remind employees of the application of the policy. Codes of conduct are tailored practical instruments for setting and communicating standards to both public officials and the wider public.

b) **Make rules available** -- Provide information on general regulations and the conflict-of-interest policy, as well as on the complementary rules and practices that establish and define the specific requirements of the public organisation concerned.

c) **Provide guidance** -- Support public officials with guidance, including real-world examples and discussions on how encountered conflicts are to be handled. In particular, give instructions on how to disclose and resolve or manage contravening private interests.

d) **Support counselling** -- Determine sources of advice for officials who are in doubt about the application of the policy, and widely publicise how public officials can obtain such advice.

2.2.2. Review risk areas for potential conflict and institutionalise in the management framework preventive measures that deal with conflicting situations, including:

a) **Ancillary employment** -- Define the circumstances, including the authorisation procedures, under which public officials may engage in outside employment.

b) "**Inside" information** -- Make sure that official information that is not in the public domain, or information obtained in confidence in the course of official duties, is not used for the private benefit or advantage of public officials or other persons, businesses and interests.

c) **Meeting procedures** -- Provide meeting agendas in advance to enable participants to foresee potential conflicts. Record in meeting proceedings any conflicts that arise and the measures taken to resolve them.

d) **Disclosure** -- Establish clear rules and procedures for disclosing private interests, particularly for those who work in exposed areas, to ensure transparency and accountability in the organisation (such as a register of interest for board members, advisors and senior management staff).

e) **Screening processes** -- Require clearance, such as tax clearance certificates, in selection processes to isolate potential conflicts of interest at an early stage.

f) **Periodic system assessment** -- Review the implementation of policy on a regular basis and update mechanisms and procedures to ensure their relevance to a constantly evolving situation.
2.2.3. Develop an open organisational culture where questions of potential conflict of interest can be freely raised and discussed with management.

a) **Involve employees** in the review of existing conflict-of-interest policy. Their opinion, as users, on the daily problems faced in the implementation of the conflict-of-interest policy can substantially contribute to the improvement of existing measures.

b) **Consult** on future prevention measures to bring a practical aspect into the policy-making process and to build a common understanding that is vital for the implementation of agreed policy.

c) **Support understanding** by providing training for officials to develop an understanding of the relevant general principles and specific rules, and to help them improve decision-making skills for practical application.

d) **Sponsor support mechanisms** for assisting managers in reviewing and improving their management framework for preventing and resolving or managing conflicts in their day-to-day work.

2.3. **Enforcing conflict-of-interest policy**

2.3.1. Provide proportional consequences for non-compliance with conflict-of-interest policy, including administrative and disciplinary sanctions for breaches of the rules.

a) **Personal consequences** of non-compliance with the policy generally start with administrative and disciplinary measures affecting the career of the public official involved. For example, non-disclosure of private interests in conflict with public duties usually results in disciplinary action for misconduct as an official. In cases of serious breaches, criminal proceedings may also be initiated where a conflict of interest amounts to a corruption offence.

b) **Management measures** can provide effective complementary forms of redress for breaches of policy, and dissuasion for those who would seek to benefit from such breaches. Such measures could include retroactive cancellation of affected decisions and tainted contracts, and exclusion of the parties involved -- corporations, associations etc. -- from future processes through debarment procedures for a given period of time, within given monetary limits or for certain types of activities.

2.3.2. Develop monitoring mechanisms to detect breaches of policy and take into account any gain or benefit that resulted from the conflict.

a) Ensure that management and internal control as well as external oversight institutions -- such as independent auditors or an ombudsman -- work together to detect those who do not comply with the stated standards. Appropriate reporting for independent oversight institutions and publication of regular reports on the implementation of arrangements and on the progress of any investigation play an important role.

b) Develop complaint mechanisms to deal with allegations of non-compliance. Provide clear rules and procedures for whistle-blowing and protect those who report violations in compliance with stated rules.
2.3.3. *Co-ordinate prevention and enforcement measures and integrate them into a coherent institutional framework.*

a) Assign a central institution for administering the conflict-of-interest regulations, or evaluate and provide guidance on agencies’ management of conflict-of-interest policy; select champion organisations and disseminate their practices.

b) Combine the benefit of instruments that can be used for different purposes -- for example, disclosure systems that require regular declaration of financial interests can both prevent potential conflicts and detect illicit enrichment.

2.4. *Initiate a new partnership with the business and non-profit sectors*

Mechanisms must be kept up to date for safeguarding the public interest in the context of increasingly intensified co-operation between public organisations and the business and non-profit sectors. This is particularly crucial when appointing representatives to public bodies from other sectors to benefit from their particular experience, knowledge and involvement.

2.4.1. *Create partnerships for integrity with the business and non-profit sectors by involving them in the elaboration and implementation of the conflict-of-interest policy for public officials.*

a) Involve representatives of the business and non-profit sectors in reviewing policy in order to have their views on the day-to-day problems of implementation.

b) Ensure that proposed standards reflect public expectations by involving the business and non-profit sectors in the design of new integrity measures. Consultations could determine mutually acceptable solutions and encourage co-operation in the implementation process.

2.4.2. *Anticipate potential conflict-of-interest situations when public organisations invite the involvement of persons representing businesses and the non-profit sector.*

a) Ensure the full benefit of involving representatives from other sectors in the work of public bodies and organisations -- such as boards and advisory bodies -- by anticipating situations where the involvement of these representatives could result in a conflict of interest.

b) Establish mechanisms that prevent confidential information, authority or influence gained through involvement in the activities of public bodies from being used for personal gain or for the improper advantage of other businesses and non-profit organisations. An example of a preventive mechanism is restricting access to particular information and registering the accessibility of confidential information.

c) Ensure the registration of private and business interests as a critical step towards safeguarding transparency in the public decision-making process and fostering public confidence in public bodies and organisations.
2.4.3. Raise awareness of the conflict-of-interest policy when dealing with other sectors, and include safeguards against potential conflict-of-interest situations when co-operating with the business and non-profit sectors.

a) **Provide information** on the conflict-of-interest policy and make other organisations aware of the potential consequences of non-compliance (which can include the termination or retrospective cancellation of a contract, recording and publicising the breach in a register, or prosecution for criminal offences such as proven corruption). Assist partner organisations, for example through providing contractors with training in compliance with and enforcement of the stated rules.

b) **Require that** private companies dealing with the public sector disclose potential relevant conflicts of interest. The terms of the contract should mention that the contract can be terminated if relevant conflicts of interest are not disclosed.

c) **Review together high-risk areas** of potential conflict of interest and develop preventive mechanisms that protect both sides in conflict situations. Ensure, for example, that private interests are disclosed transparently in the process of lobbying, that bribes and inducements are not offered to officials, and that breaches or attempted breaches of policy are brought to light and dealt with firmly and constructively. Similarly, be aware of the handling of privileged "inside" information that is not available in the public domain, and ensure that "commercial-in-confidence" information is adequately protected by verifiable processes and that decision making procedures at all stages can be audited and justified.
MANAGING CONFLICTS OF INTEREST:
COMPARATIVE FINDINGS OF THE OECD SURVEY

Introduction

14. This chapter summarises some of the main findings of the OECD Survey on Managing Conflicts of Interest in order to provide a comparative background for the discussions on the draft OECD Guidelines on Managing Conflicts of Interest at the 26th session of the Public Management Committee on 30-31 October 2002. The findings are based on the responses from all 30 OECD countries.

15. This chapter highlights the main areas covered by the OECD survey and provides a short comparative overview of the policies and practical solutions used by OECD countries to prevent and resolve conflict of interest situations. The findings of the survey and the components of the draft Guidelines were discussed at the Expert Meeting on Conflicts of Interests: Ensuring Accountability and Transparency in the Public Sector on 22-23 April 2002. The outcomes of discussions and the survey will be included in the OECD flagship report on managing conflicts of interest which aims at providing a detailed comparative analysis on trends, by using tables and charts, models and innovative solutions. The report also plans to include seven selected country case studies with information on concrete systems in their particular national context.

Defining conflict of interest

16. Conflict of interest is an essential part of the political, administrative and cultural context of a country. Two major approaches can be found, reflecting country environments:

- A principles-based approach, where a set of principles play the key role by stating what is expected of public office holders, while rules and procedures have a rather complementary role.

- A rules-based approach, that employ detailed enforceable standards, however these standards are also based on fundamental public service principles that embody aspirational goals.

17. Very few countries have a legal definition for the term conflicts of interest. Countries with very detailed regulations on conflicts of interest rather define a variety of circumstances that are considered likely to create conflict of interest situations. They also prohibit certain activities and situations that might adversely influence confidence in the impartiality of executing public tasks.

18. Conflicts generally arise from financial and economic interest. However other personal interests, undertakings and relationships may also compromise, directly or indirectly, the performance of duties of public office holders. This also includes situations where actions taken in an official capacity could be seen as being influenced by an individual’s personal interest.
Defining Conflict of Interest: the Tailored Approach in New Zealand

In New Zealand, the definition of conflicts of interest is tailored to targeted groups, such as public servants, ministers, board members of crown companies. Nevertheless, these definitions contain common features. For example they all cover actual and perceived as well as direct and indirect conflicts. In addition to the general definitions outlined in this box, supplementing documents also list possible types of conflicts of interest situations, together with concrete practical examples.

For **public servants**, “conflicts of interest are defined as, … any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties, or the standing of their department in its relationships with the public, clients, or Ministers. This would include any situation where actions taken in an official capacity could be seen to influence or be influenced by an individual’s private interests (e.g. company directorships, shareholdings, offers of outside employment). … A potential area of conflict exists for public servants who may have to deal directly with Members of Parliament who have approached the department in a private capacity”. (Code of Conduct)

For **ministers**, “conflicts of interest can arise because of the influence and power they wield - both in the individual performance of their portfolio responsibilities and as members of Cabinet. Ministers must conduct themselves at all times in the knowledge that their role is a public one; appearances and propriety can be as important as actual conflict of interest in establishing what is acceptable behaviour. A conflict of interest may be pecuniary (that is, arising from the Minister's direct financial interests) or non-pecuniary (concerning, for example, a member of the Minister's family) that may be either direct or indirect”. (Cabinet Manual)

For **board members of crown companies**, a conflict of interest is defined as a situation in which a board member is “party to, or will or may derive a material financial benefit from” a transaction involving his or her company (The Companies Act 1993, Part VIII, Section 138 & 139).

For **board members**, conflicts are defined as arising … “where a prospective or existing board member has an interest which conflicts (or might conflict, or might be perceived to conflict) with the interests of the Crown body itself. The key question to ask when considering whether an interest might create a conflict is: does the interest create an incentive for the appointee to act in a way which may not be in the best interests of the Crown body? If the answer is ‘yes’, a conflict of interest exists. The existence of the incentive is sufficient to create a conflict. Whether or not the appointee would actually act on the incentive is irrelevant”. (Board Appointment and Induction Guidelines, State Services Commission, August 1999.)

19. As the starting component, countries have elaborated core principles of the conflict-of-interest policy. In order to put the stated core principles into practice, countries employ various mechanisms that identify and manage potential conflicts of interest, namely:

- Stating in regulations those situations that could lead to conflicts of interest. Some countries employ the principle of exclusiveness that requires full dedication to the discharge of public duty: in general these countries define the activities that are incompatible with fulfilling a public function and the exceptions to this rule. In the case of an exception, the commonly employed method is to require employer’s consent, regularly in written form. Other countries list specific situations that are subject to statutory limitations.

- Putting in place systems that identify and manage potential conflicts in the daily practice. Guidelines to help recognise actual or emerging potential conflicts, as well as clear procedures and accountability mechanisms that clarify the responsibilities of key players, are the cornerstones of such systems. When in doubt, it is the public servant’s responsibility to inform the manager or immediate superior who has to decide on what measures to take to resolve the actual conflicting situation.
Scope of the OECD survey

20. The primary focus of the survey was on public officials, both public servants and holders of public office whether elected or appointed, working in the national government administration. Responses clearly indicated that OECD countries pay rigorous attention to:

- Policy-makers (officials working in senior positions);
- Officials working in key functions of the state, such as law enforcement; and
- Decision-makers in sensitive areas at the interface of the public and private sector.

Countries with specific conflict-of-interest policy for particular categories of public officials

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<thead>
<tr>
<th>Category</th>
<th>Number of Countries</th>
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<tbody>
<tr>
<td>Auditors</td>
<td>10</td>
</tr>
<tr>
<td>Ministerial cabinet staff</td>
<td>15</td>
</tr>
<tr>
<td>Procurement officials</td>
<td>20</td>
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<tr>
<td>Judges</td>
<td>12</td>
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<tr>
<td>Tax officials</td>
<td>16</td>
</tr>
<tr>
<td>Prosecutors</td>
<td>17</td>
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<tr>
<td>Contract managers</td>
<td>14</td>
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<tr>
<td>Customs officers</td>
<td>12</td>
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<tr>
<td>Senior public servants</td>
<td>20</td>
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<tr>
<td>Ministers</td>
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Sources of conflict-of-interest policy

21. The fundamental rules of the conflict of interest policy are considered so important that they are included in the legal framework. General principles and basic rules can be found in laws on public or civil service and public administration. In a few countries even Constitutions state principles, particularly those which affect citizens’ rights (for example, restrictions on political rights, strike, proscription of exclusiveness: the obligation of public servants to exclusively serve the public interest, incompatibilities for public office holders).

22. More and more specific laws cover sensitive areas for particular groups (e.g. company law for board members) and an emerging trend shows that specific laws on conflicts of interest or codes of conduct contain new regulations on how to handle such situations. For instance, the most recently developed codes of conduct in Europe not only set general principles but also give directions on what to do in case of doubt (e.g. the new Italian Code of Conduct for Government Employees that came into force in April 2001, and the Czech Code of Ethics for Public Servants approved by the Government in March 2001). The following chart indicates what formal sources determine conflicts-of-interest policy in OECD countries.
Identifying and resolving conflicting situations

23. While the ultimate responsibility is on the individual to recognise in which situations a potential conflict may arise between private interest and public duties, OECD countries seek to define the most exposed areas for which instructions and guidance are necessary to prevent and resolve conflict-of-interest situations. The following charts indicate the most commonly determined activities and situations in OECD countries, the more specific forms of business interests, as well as external activities and positions that hold potential for conflicts for public officials.
What external activities and positions are identified as holding potential for conflicts of interest for officials?

- In voluntary organisations
- In positions in NGOs
- In elected public entity
- In trade unions
- In a political party
- In secondary employment in the public sector
- In an entity with relationship with the government
- In positions in the private sector
- In secondary employment in the private sector

Number of countries

What activities and situations are identified as holding potential for conflicts of interest for officials?

- Investments
- Shareholdings
- Partnerships

Business interest

Number of countries

24. In certain situations the core value of the public service might be in conflict with basic citizens’ rights: for example, public servants’ political activities might conflict with their primary duty to serve the government of the day in a politically neutral manner. The competing, general principles required for different employment positions could also lead to conflicting situations, for example the contradiction between the obligation to report crimes and the professional confidentiality requested in social and health services.

25. Activities that significantly affect the full and proper exercise of official duties are considered to be incompatible with public service employment. In cases of unavoidable, serious and pervasive conflicts of interest, the legal regulations restrict public servants from these activities and positions. For example, following the rule of separation of powers, civil servants can be strictly prohibited from being a Member of Parliament in a number of countries. Moreover, to ensure the political neutrality of the civil service, they are not allowed to hold office in a political party or undertake an activity on behalf or in the name of a political party, apart from standing as a candidate in the general or local elections. Stricter conditions can be prescribed for certain groups that are exposed to politics, for example employees of an electoral commission. Concerning the public-private sector interface, key decision makers involved in privatisation or outsourcing are prohibited for a limited period from accepting employment with the privatised company or outsourced provider.
26. The potential for conflicts of interest may be unavoidable in a reasonable number of appointments – especially in the case of board appointments when only a few individuals may possess critical skills, and there is a high demand for them both in the public and the private sectors. Managing conflicts of interest is often the only solution when appointing these experts in the public sector who have critical knowledge of and expertise in specialised areas. A conflict of interest should be recognised and managed, although a severe conflict -- that is unavoidable, serious and pervasive -- should mean a candidate is not suitable for an appointment, or should resign if these types of conflict arise during the course of the appointment.

27. While measures aiming at preventing conflict-of-interest situations focus essentially on the period of the tenure, very few countries also require public servants to declare their criminal record or extra-occupational work before employment. The principal instrument used by OECD countries is to provide information on personal interest in advance (as defined by law in general) or report immediately when a conflict of interest arises. In addition, over a quarter of OECD countries require their public officials to disclose information on their post-employment arrangements.

28. However, the declaration of personal interest itself does not resolve a conflict. Additional steps that are necessary include, divestment, transfer of duty, increased transparency and scrutiny of decisions and even resignation. Reflecting the increased close relationship between the private and public sectors, more and more countries have introduced the blind trust assignment of pecuniary interests or blind management agreement, as the following chart shows.

![Measures used to resolve conflict of interests situations](chart)

Consequences of breaching the policy

29. OECD countries mainly employ disciplinary actions and criminal prosecution along with the cancellation of affected decisions and contracts as indicated in the following chart.
30. Depending on the seriousness of the breach, disciplinary sanctions can range from warning and reprimand through fines and re-arrangements of duties, to suspension and removal from office. Non-disclosure of conflict of interest is generally considered a serious breach, and it results in disciplinary action or even criminal penalties depending on the circumstances of the case. In specific cases, when political or senior post holders do not disclose their relevant personal interests, it may interrupt their career (loss of mandate for elected officials and resignation in case of appointed positions). Ministerial advisors, in addition to losing office, also have to reimburse the remuneration they have received.

31. Public servants can be obliged to eliminate the cause of the conflict of interest, by suspending those activities that were carried out without authorisation, or with authorisation but based on inappropriate disclosure. In addition, the decisions can also be cancelled if prepared or made by officials who did not disclose their relevant personal interest. For example, when it is found that an official with adjudicatory power holds a personal interest related to a company participating in a bidding process, there is a risk that the decision will be cancelled and the company excluded from further bidding for a determined term.

The critical role of the manager

32. The most common way to resolve a conflict-of-interest situation when it arises is to inform the manager or immediate superior who has the primary responsibility for determining what measures should be taken. When in doubt, in addition to the manager, internal personnel or legal staff as well as external organisations (such as independent commissions, ethics offices and Trade Unions) can also provide advice.
33. While managers also play a key role in monitoring whether their staff comply with the rules, government organisations (for example the civil service department) and external institutions (commissions, Auditor General, Ombudsman and even the Constitutional Court) take an overall interest in monitoring the implementation of conflict of interest policy and the compliance of the most senior officials.

**Putting policy into practice and assessing its impact**

34. OECD countries focus on the induction period to ensure that public officials are aware of the rules of conflict-of-interest policy. The most common methods used in OECD countries are indicated in the following chart:

![Chart showing how public officials are informed of the conflict-of-interest policy](image)

35. Major factors across OECD countries that have influenced the conflicts-of-interest policy include on the one hand rising community expectations, increased transparency in public life and closer public scrutiny by the media and opposition parties, and on the other hand the rapidly evolving interaction between the public and private sectors (with more grey areas and business-like behaviour of public officials). This requires the periodic assessment of existing mechanisms so as to ensure that core public sector values are abided by. Maintaining public confidence is particularly important in the new public management environment, where deregulation and devolution have created a situation in which citizens’ compliance with crucial laws is directly related to their trust in the administration. It is especially important in principal areas of State functioning, such as taxation, licensing and registrations as well as benefit administration.
What factors have influenced the conflicts-of-interest policy in the past 5–10 years?

- Supporting political leadership
- Evolution of the conflicts-of-interest concept
- Closer relationship between the public and private sectors
- Rising community expectations
- Closer media scrutiny
- Increased transparency in public life

36. No single instrument was characterised as the most effective in avoiding conflicts of interest, although a combination of mechanisms -- especially those that raise awareness and ensure transparency -- proved effective in several countries. The annual updating of statements on private interests together with training and consultation are key elements in a system which puts greater reliance on the individual to self-disclose their private interests. On the other hand, in systems which place less reliance on individual arrangements, the maintenance of relevant legal regulations is the key measure to providing an effective basis for the system. However, laws themselves provide a firm and static framework that should be accompanied by clarification of rules and precise interpretation of the employee’s expected conduct.

37. A clear majority of countries find the dynamic and interactive measures as the most effective in avoiding conflicts of interest. Most importance is given to awareness raising, guided discussions, consultations and dialogue between employees and managers to enable employees to prevent and to resolve conflicts of interest if they appear. In a time when electronic communication is prominent, publications, interaction and provision of information through the Internet becomes vital, and many countries use it as a transparent way of communication that also links the public and its public officials.

An example of the holistic approach to develop an open culture that maintains the dynamics of communication and assessment can be found in Finland. Some of its key elements comprise:

- Factors promoting awareness such as the clarity of norms, information on them and knowledge of their practical application.
- Preventive mechanisms for safeguarding impartiality of civil servants: the hearing of parties, the presentation of grounds for a decision and its publicity, rules and provisions of disqualification of civil servants.
- Retroactive means of legal protection for self-correction, appeal and petition for review.
- Ensuring transparency of the activities of state administration: decision making is open and documents are public with the exception of documents defined as secret or confidential.
The most influential measure in OECD countries was mentioned as ensuring the transparency of disclosed personal interests, by making them available for direct or indirect public scrutiny and an active media. Several countries reviewed their conflicts-of-interest policy in the last 2-3 years and requested follow-up measures due to the increasing closeness between the public and business and non-profit sectors. However, only a few countries have developed sector agreements with private sector companies to ensure the standards of conduct that employees are required to maintain. In a converging area, legislation may introduce compatible procedures in sensitive fields such as procurement and recruitment (for example publishing vacant positions) for the non-profit sector.

38. Increasing interchange of personnel, ongoing outsourcing, more transfer of public services is further modifying the public-private sector interface. Moreover, the evolving private sector provides a widening variety of financial investment instruments and diverse business involvement (e.g. through sponsoring) and urges countries to upgrade their mechanisms in a more proactive way to meet rising public expectations. However, the other sectors can also be partners in these efforts and together with the representatives of the businesses, non-profit community and the employees’ associations governments can work out standards for the most sensitive issues and emerging problems such as ensuring proper disclosure of private interest in lobbying or determining procedures for whistle-blowing.