



# CONFLICT OF INTEREST IN LEBANON

Legal Frameworks and Recommendations



Anti-Corruption & Transparency Project  
مشروع مكافحة الفساد وتعزيز الشفافية



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# CONFLICT OF INTEREST IN LEBANON



**Legal Frameworks and Recommendations**

# INTRODUCTION

## A. CONTEXT OF THE STUDY

Along the last decade, Lebanon started to adopt a body of laws in order to implement the United Nations Convention against Corruption (UNCAC) as well as to strengthen integrity in various fields of its public life.

Despite the urgency and the international pressure, some laws concerned by this commitment have not been adopted yet. Among these, the law on conflict of interest.

A first bill was drafted and presented in 2011 and is still pending for approval by the Parliament. This bill was recently submitted to various institutions for observations and analysis, and is now still in question.

Since October 17, 2019, the massive protests have denounced the high level of corruption of the ruling class. One year later, a new law - Law 189/2020 on Declaration of Patrimony and Interest and Punishing Illicit Enrichment - has been adopted, amending the existing Law 154/1999 on Illicit Enrichment.

Under the Act project, Expertise France provides technical assistance to OMSAR in the framework of the national efforts on anticorruption. This assistance now focuses on assisting OMSAR in forming an efficient technical committee and lead the reflection on conflict of interest.

## B. OBJECTIVE OF THE STUDY

Under international and popular pressure calling for structural changes, the need to complete the legal framework on anticorruption measures is now a priority. Defining and regulating conflict of interest is necessary, as it is an important source of corruption and an obstacle to a correct running of public services.

The main objective of the study presented in this document is to support the Lebanese government in implementing an effective system for managing conflict of interest.

### Specific objectives are:

- Provide a comprehensive assessment of existing legal provisions in Lebanon;
- Present a useful comparison with international best practices and identify the gaps or overlaps;
- Provide technical advice on how to enforce existing provisions and address the gaps.

## C. METHODOLOGY

### Collecting information

A first mapping exercise was undertaken in order to do the inventory of all existing norms (laws, decrees, etc.) related to conflict of interest in their dedicated provisions. We also identified texts linked to similar situation or breaches of law such as illicit enrichment or corruption.

### Compiling information

This mapping was done entirely as desk research, compiling information available online in a specific chart (Annex 1), and later classifying every provision depending on the conflict of interest situations.

## INTRODUCTION

### Analysis

The main findings are displayed per topic following this presentation:

- Existing legal provision in Lebanon
- International best practices on the topic
- Recommendations

It will constitute a matrix of analysis and assessment of the legal situation and solutions, as comprehensive as possible, to avoid any gap and to help the committee in its discussions to validate the best decision.

Both criteria of realism and efficiency will govern this study; the aim being to propose adoptable and implementable norms.

The committee will continue to meet periodically until texts are finalized and presented for adoption.

### Starting from a practical case point of view

A latest approach has been implemented to start from practical cases to related issues, then to examine the international best solutions and practices on this matter. This aims to finish with an examination of the Lebanese existing or missing framework.

## D. DEFINITION OF CONFLICT OF INTEREST

A conflict of interest arises when decisions of public officials are - or can be -influenced by their private interests over and above the public interest.

In such cases, individuals use their public office to advance their private gain, making decisions that do not necessarily coincide with the broader interests of their constituencies.

While the definition of conflict of interest may be clear in theory, it is extremely difficult to characterize in practice, as there are no necessarily well-defined

boundaries separating public and private interests.

Moreover, these boundaries may be difficult and costly to monitor; as a result, there is considerable variation in the nature and scope of conflict of interest regulations across countries.

Conflict of interest takes place in various situations of a public service:

- It can be present during recruitment, breaking the principle of equality and favouring nepotism.
- It can happen during procurement processes, moving against the principles of free competition.
- It can occur during grants procedures or licences/administrative authorizations issuing and opens gate to embezzlement.
- In the same way, it can be found during revolving doors issues where appointees have used of their past influence as officials to be later on recruited by private firms, which took the benefit of this previous proximity.

The importance of building the public administration in accordance with the principles of integrity, transparency and accountability is underlined in **chapter II of the United Nations Convention against Corruption (UNCAC), in particular in its articles 7 and 8.**

Article 7, paragraph 4, directly addresses Conflict of interests:

*“Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.”*

The **OECD**<sup>1</sup> adopts in its guidelines a definition deliberately simple and practical to assist effective identification and management of conflict situations, as follows

*“A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official’s private-capacity interest could improperly influence the performance of their official duties and responsibilities.”*

It is crucial to distinguish an apparent conflict of interest to a potential one. The first is one in which a reasonable person would think that the professional judgment is likely to be compromised. A potential conflict of interest involves a situation that may develop into an actual conflict of interest.

For a public official, having an “apparent conflict of interest” can be as serious as having an actual conflict, because of the potential for doubt to arise about the official’s integrity, and the integrity of the official’s organisation.

According to the **European Union**<sup>2</sup>, a conflict of interest generally refers to a situation where the impartiality and objectivity of a decision, opinion or recommendation of an agency is – or might be – perceived as being compromised by a personal interest held or entrusted to a given individual.

Relevant personal interest may be of financial or non-financial nature and it may concern a personal or family relationship or professional affiliations (including additional employment or «outside» appointments or former employments or appointments) and other relevant outside activities.

The appearance of conflict of interest can constitute a reputational risk to the agency, or the administration even if it turns out to be unsubstantiated.

Therefore, a risk of perceived conflict of interest should be treated as if it were an actual conflict. This is done while giving due consideration to proportionality, specific backgrounds, all relevant facts, and the mitigating circumstances.

According to the **Council of Europe**, conflict of interest is a situation in which the public official has a private interest, which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties<sup>3</sup>.

Three aspects must be taken into account in order to assess interference:

1. A material aspect: when the interest and public duty are in the same activity sector;
2. A geographical aspect: when the public official aspect is connected with the territory in which he or she performs a public duty;
3. A temporal aspect: interests may interfere if they are contemporary or recent with regard to the performance of public duties. For interests abandoned before taking up a public position, the further back in time they are – in particular as regards former professional relationships – the lower is the risk conflict of interest.

When all three factors are combined: interest and interference and intensity, reasonable doubt arises as to a duty’s impartial performance, along with a risk of conflict of interest. Reasonable doubt arises *in concreto* when, after consideration of the various aspects of a case, a public official subjective impartiality may be called into question.

<sup>1</sup> OECD, Managing conflict of interest in the public sector – A toolkit, 2005. <http://www.sourceoecd.org/governance/9264018220>

<sup>2</sup> EU, Guidelines for conflict of interest policies in EU decentralised agencies, 2013.

<sup>3</sup> Council of Europe, Recommendation N° R (2000) 10 of the Committee of Ministers to Member states on code of conducts for public officials, Adopted by the Committee of Ministers at its 106th session on May 11, 2000



## INTRODUCTION

### Lebanese legal provisions

The Lebanese penal code (Legislative decree 340/1943) punishes crimes involving indirectly conflict of interest.

Article 364: *“Every employee who obtains a personal benefit from one of the public transactions within the administration to which he belongs, whether he did so directly or through a virtual person or by resorting to virtual instruments, is punishable by imprisonment from three months to two years and a fine of at least two hundred thousand pounds.”*

The Lebanese law on illicit enrichment 154/1999, recently amended by **Law 189/2020 on Declaration of Patrimony and Interest and Punishing Illicit Enrichment**, is considering only one aspect of the consequence of conflict of interest which, as a predicate offense, is leading to illicit enrichment and states that **Illicit enrichment is any great addition to one’s patrimony occurring in Lebanon or abroad, after employment/appointment, to any public servant, whether subject to declarations or not, when this addition cannot be explained rationally as compared to his/her salary and legitimate resources.**

### Recommendations

We recommend adopting a specific provision on conflict of interest – which would cover in a holistic point of view every case of conflict of interest - inside this article 364 of the penal code or as an addition.

## E. CONTENT OF THE STUDY

Based on the definition presented above, the study maps all the measures needed to be adopted in order to prevent, deter, stop, investigate, and sanction cases.

The preventive measures can be divided into three main topics:

1. Disclosure which leads Lebanon to adopt provisions about mandatory declaration of interest for its official (chapter 1);
2. Standards of restrictions to strictly limit the potential risks of conflict of interest (chapter 2);
3. Enforcement measures to ensure that all the legal fences adopted will be implemented (chapter 3).

As offenses may occur in spite of the law, the study presents direct remedial measures (chapter 4) linked with conflict of interest and indirect ones (chapter 5) linked with other penal offenses.

It finishes by proposing institutional (chapter 6) and legal (chapter 7) frameworks to ensure the implementation of these measures.

## CHAPTER 1

# PREVENTIVE MEASURES: DISCLOSURE



## CHAPTER 1

# PREVENTIVE MEASURES: DISCLOSURE

Disclosures can be divided into two categories:

- Ad hoc disclosure: disclosing private interests when a conflict arises with public interest
- Preventative disclosure: declaring one's private interests on a regular schedule
- Disclosure requirements place the burden of compliance on both the public official and the supervising agency.

This disclosure process has to answer the following questions:

1. Who must disclose?
2. What type of information must be disclosed?
3. When must disclosures be submitted?
4. If regular disclosure is not required, does this absolve an official from the responsibility to report conflicts of interest?
5. What information must be made available to the public?

## A. DECLARATION OF INTEREST AS A PREVENTIVE DISCLOSURE

### IMPOSING THE PRINCIPLE

#### PRACTICAL CASE(S)

- Many cases happen in Lebanon when an official is linked by interests of various natures (kindship, friendship, religion, politics, finance, business...) with other people he/she is dealing with during his/her functions as a public agent, what type of link should be considered as conflict of interest considering the Lebanese culture?
- Because these links are officially unknown and, in some cases, very well hidden (because they're fraudulent), only few know that public actions of these public agents are not aimed by the general interest and are able to denounce their misbehaviour. How is it possible to manage the fact that the Lebanese law opens the gate to whistle blowing without making information as transparent as possible?

#### BEST PRACTICES

The lack of an obligation of declaration of interest (in link with an obligation of declaration of assets) is an open gate to make such a system lasting for ever.

The requirement for public officials to disclose their assets and interests is a relatively modern trend.

While it was initially thought to be a violation of the right to privacy, the approach to asset and interest disclosure has been changing gradually, influenced by decisions of international human rights bodies and growing concerns for integrity in public administration.

Many countries consider the importance of putting in place effective systems for the disclosure and declaration of conflicts of interest. Transparency mechanisms that ensured that outside private interests did not influence the decisions of the public official were an important and powerful corruption prevention tool. Such mechanisms not only informed the public of the potential linkages and dependencies of the public officials but also facilitated the detection of corruption and further investigations.

Approaches to the disclosure of conflicts of interest differ, with two general trends depending on countries.

In implementing article 8, paragraph 5, of the UNCAC, many States had put in place official paper-based or electronic systems requiring public officials to declare their assets, liabilities and business and sometimes even private interests such as links to officials or businesspeople.

A number of countries consider that the institutionalized system of regular submission of asset and interest declarations is often complemented by a requirement that public officials disclose, on an ad hoc basis, situations in which their private interest may influence the independent and professional discharge of their functions.

## LEGAL FRAMEWORK

### Lebanese legal provisions

**Law on Declaration of Patrimony and Interests and Punishing Illicit Enrichment (as amended by the Committee on Administration and Justice and thereafter the Sub-Committee derived from the Joint Committees)**

**Law 189/2020 (as amended)**

Article 2: (discusses the obligation to submit the declaration)

*Every public official must submit his declaration outlining all his interests and those of his minor children and spouse(s), and when both spouses are required to submit a declaration, they submit two separate ones, and the guardian submits the permit for minor children.*

A draft model of declaration is prepared, it includes disclosure of both interests and assets as presented below.

### Recommendations

- a first assessment on the implementation of the new law 189/2020 could be carried out after 1 year to evaluate its impact and the possible remaining issues

## CHAPTER 1

### PREVENTIVE MEASURES: DISCLOSURE

#### WHO IS CONCERNED?

##### PRACTICAL CASE(S)

- A kinship of 3 degrees links an official with one his/her family member, is there a risk of conflict of interest?
- An official was previously hired by a consulting firm and is now appointed in a ministerial cabinet; can he still advise to his Minister the same recommendations he did as a consultant? Can he assign this consulting firm for a contract with the Ministry? Can he be reappointed after leaving the cabinet position in the same consulting firm?
- Can a member of the Court of Accounts, who was previously a high ranking official in a Ministry, audit the budget of his last administration?
- Can a policeman carry out a non-official investigation, using all the police resources, just for coping with a personal problem?
- Can a magistrate, having committed a penal offense, be judged by his colleagues of the same court?
- Can a MP having been in personal contact (invited to a lunch) with a lobbying organisation be allowed to vote a law favouring the interests of this organisation?
- Can a mayor, who is CEO of a local firm, adopt a budget where sums are pledged to contract a procurement with another firm which is a customer of his own company?
- Can an official, who is known to have very close relationships with managers of private firms, be accused of conflict of interest if these firms are bidding for a procurement offer, though he has no power of decision in the selection process but can only informally influence his colleagues entitled of this attribution?

##### BEST PRACTICES

One important aspect of conflict of interest management regimes is the scope of the categories of public officials that are covered by the conflict of interest legislation.

As already mentioned supra, three specific groups are mostly concerned by this obligation:

1. politically appointed public officials and high-level civil servants
2. public officials employed in the administration of the executive, legislative and judicial branches of power
3. public officials with functions which were considered especially vulnerable to corruption such as officials engaged in procurement, customs, law enforcement or the judiciary

If we follow the principles of the Council of Europe, it concerns:

- **(a)** Any person holding a legislative, executive, administrative or judicial office, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority. It also includes any other person who performs a public function, including for a public agency or public enterprise, or provides a public service.
- **(b)** "Family" means at the minimum spouses, children, adopted children, parents, adoptive parents, brothers, sisters, or any other persons living with the public official in the same household or in a civil partnership.
- **(c)** "Close personal relations" include, but are not limited to, past and ongoing friendship or enmity.

## CHAPTER 1 PREVENTIVE MEASURES: DISCLOSURE

- **(d)** “Business relations” means a past or ongoing entrepreneurial trade relationship or common business under civil law.
- **(e)** “Political relations” means the membership of a public official in a political party, or his/her relation to another member of that political party, if both have a formal function in party management or party campaigns.”<sup>4</sup>

OECD in its guidelines<sup>5</sup> specially focused on:

- Policymakers and public office holders working in the most senior positions.
- Public officials working in key functions of the state, such as law enforcement.
- Decision-makers in sensitive areas at the interface between the public and private sector.

Core principles guide public officials in the application of integrity standards; these officials can be expected to observe the following core principles in dealing with conflict-of-interest matters:

- Serving the public interest.
- Supporting transparency and scrutiny.
- Promoting individual responsibility and personal example.
- Engendering an organisational culture which is intolerant of conflicts of interest.

The financial or pecuniary interests of officials are generally considered as the principal causes of conflict of interest.

However, a forward-looking policy should also describe examples of other causes, such as related-party business undertakings, personal relationships and non-financial personal interests that can be relevant in a very complex public sector environment.

In addition, affiliations with for-profit or non-profit organisations, or with political or professional organisations, can also give rise to new and difficult examples of conflict.

Public organisations have the primary responsibility to define particular situations and activities that are incompatible with their public function.

### Lebanese legal provisions

#### **Law on Declaration of Patrimony and Interests and Punishing Illicit Enrichment (as amended by the Committee on Administration and Justice and thereafter the Sub-Committee derived from the Joint Committees)**

#### **Law 189 (as amended)**

#### **Part One: Terms**

Article 1: (merges articles 2 and 4 of old law and amends them)

*(1) defines the employee in a much more detailed manner. It includes all persons who work whether paid or unpaid adding that whether they are part of the public or private sector, whether they are on the centralized or decentralized level, and including all work for institutions whether partially or fully owned by a body of the public law, whether employed legally or practically. It included positions of constitutional powers, and any legislative or judicial or executive or administrative or military or financial or security or consultative position.*

<sup>4</sup> Council of Europe, Legislative toolkit on conflict of interest, 2015

<sup>5</sup> Op. cit, OECD 2006.

## CHAPTER 1 PREVENTIVE MEASURES: DISCLOSURE

**(2)** defined the public employee who is subject to the declaration: any public employee except the employees of the fourth category of public service, and lower categories, who are not assigned any job of a higher category, as well as individuals in the teaching body at the Lebanese University and schools and public institutes. Also subject to the declaration are the employees in the Ministry of Finance and the Customs employees of real estate departments as well as the president and members and employees of administrative committees and independent and organized bodies established by law (of all categories and ranks) if their actions have financial results.

**(3)** defines the “Commission” as the National Anti-Corruption Commission established by law.

### Part Two: Declaration of Assets and Interests

Article 2: (discusses the obligation to submit the declaration)

*Every public official must submit his declaration outlining all his interests and those of his minor children and spouse(s), and when both spouses are required to submit a declaration, they submit two separate ones, and the guardian submits the permit for minor children.*

### Recommendations

Lebanon has to establish a roster fixed by law to enumerate all the positions whose incumbent should need to declare his/her interests to precise the content of the article 1 of the law 189/2020 and gives to the NACC the exhaustive list of people submitted to declarations.

Though the article 1 of the law 189/2020 concerns public servants, it is highly recommended to include all people holding a political mandate both nationally and locally, who are likely to be more concerned by risks of conflict of interest.

This list could be updated and extended after one year following up the results of the recommended impact studies carried out after implementation of the provisions imposing declaration of interests.

## WHAT IS AN INTEREST?

### PRACTICAL CASE(S)

- A civil servant has a professional side activity (teaching, consultancy...)
- His wife is working in a company linked by contract with his administration
- He is holding shares in a company
- He is linked with an elective office and/or has strong link with a political party
- He belongs during his free time to an NGO
- He had interests in the past in a private firm which is not at the moment of his recruitment a contractor of his new administration

### BEST PRACTICES

The scope of the information requested is also linked to the purpose of the system. In those systems that are focused on identifying conflicts of interest, there is a tendency to request information on links to interests in both privately and publicly held businesses together with details of activities of the public official outside of their employment.

## CHAPTER 1 PREVENTIVE MEASURES: DISCLOSURE

In contrast, when the purpose of the system is to identify illicit enrichment, the information requested tended to focus on assets of value, sources of income and, in some cases, expenditures. The detail and specifics of the information requested vary significantly from a state to another.

### According to the Council of Europe:

*“the public official’s private interest includes, but is not limited to, any advantage to himself or herself, to his or her family, persons or organisations with whom he or she has or has had close personal, business or political relations. It includes also any liability, whether financial or civil, relating thereto”.*<sup>6</sup>

**Article 13 of Recommendation No. R(2000) 10 of Council of Europe**<sup>7</sup> explains, first of all, that a private interest includes

*“any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations ... [and] also any liability, whether financial or civil, relating thereto”.*

Further, as any public official must be aware of the possibility of a conflict arising, Article 13 recommends that he or she take steps to avoid it, disclose it to his/her supervisor at the earliest opportunity and comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

In France, declaration of interest includes 8 categories:

- Professional activities which give rise to remuneration or gratuities and which are performed on the date of appointment;
- Professional activities which gave rise to remuneration or gratuities and which were performed over the last five years;
- Consulting activities performed on the date of appointment and over the last five years;
- Involvement in managing bodies of a public or private organisation or of a company on the date of appointment or over the last five years;
- Direct stakes in the capital of a company on the date of appointment;
- Professional activities performed on the date of appointment by the spouse, civil union partner or common law spouse;
- Volunteer work likely to give rise to a conflict of interest;
- Elective duties and offices performed and held on the date of appointment.

In the Tunisian example, it includes:

- Assets
- Assets of wife/husband and children under 18
- Gifts and liberalities during the appointment
- Other functions, mandates, personal and professional link

The Council of Europe defines restrictions on business, State-owned enterprises or political activities and restrictions in articles 2, 3 and 4 of its regulatory guidelines of the legislative toolkit on conflict of interest.

<sup>6</sup> Op.cit, CoE, 2015

<sup>7</sup> Recommendation R (2000) 10 adopted by the committee of ministers in the 106th session of the Council of Europe on 11 May 2000 about codes of conduct pour public agents.



## CHAPTER 1 PREVENTIVE MEASURES: DISCLOSURE

### LEGAL FRAMEWORK

#### Lebanese legal provisions

The new declaration (provided as an Annex to the Law 189) presents interests and assets as follows:

- 1. Income from public employment sources related to main and accessory public job(s) including basic salary, extra salary, rewards and bonuses.**
- 2. Movable and immovable assets in Lebanon and abroad**
  - Precious minerals and gemstones not coined whose value exceeds 10 times the official minimum wage or what corresponds to it in foreign currency
  - Ornaments and jewellery whose value exceeds 10 times the official minimum wage or what corresponds to it in foreign currency
  - Expensive watches whose value exceeds 10 times the official minimum wage or what corresponds to it in foreign currency
  - Paintings and artefacts whose value exceeds 10 times the official minimum wage or what corresponds to it in foreign currency
  - Pieces of furniture whose value exceeds 10 times the official minimum wage or what corresponds to it in foreign currency
  - Cars in all their types
  - Planes and ships and yachts or any other motor vehicle
  - Any other movable assets whose value exceeds 10 times the official minimum wage or what corresponds to it in foreign currency
- 3. Immovable assets and Real estate in Lebanon and abroad**
- 4. Interests which result in income in Lebanon and abroad**
  - Activities and investments in any economic projects and credit interests
  - Bonds and investment portfolios in all types
  - Positions and roles and jobs and memberships, whether by appointment, elections, in any body of the public law
  - Positions and roles and jobs and memberships, whether by appointment, elections, in any body of the private law
  - Professional relationships
  - Other interests which result in direct rights and economic rights
- 5. Interests that do not generate any income in Lebanon and abroad**
  - Contribution in any projects/activities
  - Positions and roles and jobs and memberships, whether by appointment or election, in any body of public law
  - Obligations and debts in Lebanon and abroad
  - Rentals
  - Rights and other income in Lebanon and abroad
  - Income from different commercial activities
- 6. Endowments/donations**
  - Assets acquired through inheritance or wills
- 7. Any other income not referred to in this form**

#### Recommendations

None

## WHEN TO DECLARE?

### PRACTICAL CASE(S)

It can be:

- When appointed
- Every year
- In each change of position
- In each sensitive occasion/mission
- Every 3 years (i.e. Tunisia)
- When ending appointment

### BEST PRACTICES

In relation to the method of submission of assets and interest's disclosure reports, three clear variants were reported: States that accept electronic submissions only, those that accept paper-based submissions only, and those that accept both types of submissions.

Some States that implement either paper-based or electronic submissions give the declarant the option of which format to use.

Other States consider that paper-based systems were required for some categories of officials.

### LEGAL FRAMEWORK

#### Lebanese legal provisions

**Law on Declaration of Patrimony and Interests and Punishing Illicit Enrichment (as amended by the Committee on Administration and Justice and thereafter the Sub-Committee derived from the Joint Committees)**

**Law 189 (as amended)**

#### **Article 3: (amends Article 4 (2+) in old law)**

The period to submit a first declaration was amended to 2 months after entry into employment (it was 3 months), and it became a condition for employment.

Renewal of employment/public service by virtue of re-election or extension or mandating is considered a new employment and therefore a new declaration needs to be submitted.

A routine declaration every 3 years needs to be submitted (after it was only upon entry and upon leaving public employment).

A final declaration is submitted 2 months after end of employment.

Upon entry into force of this amendment, all public employees are to present new declarations within a period of 3 months even if they have previously submitted a declaration.

If the individual has several jobs included in this law, the public employee only submits one declaration.

#### **Article 4: method of submission of declaration and its provisions (amended article 5 of old law)**

Declaration is submitted in a sealed and signed envelope or through any electronic method accepted by law as long as it preserves the secrecy, based on the specimen attached with this law.

#### Recommendations

To ensure the effectiveness of the measures, it is important to allocate adequate means to the NACC in charge of gathering the declarations.

A double system composed with declarations at the recruitment point and a compliance procedure to detect internally and externally (through whistle blowing mechanisms)

## CHAPTER 1

### PREVENTIVE MEASURES: DISCLOSURE

would be a fair beginning if controls are really implemented and the disclosures are publicized.

To avoid fraud committed after the end of assignment/appointment in case of revolving door, a system of whistleblowing (extending the provisions of article 12 of law 189/2020), as well as specific powers of control given to the NACC should be implemented to monitor the career of the previous civil servant during a period of incompatibility of 5 years.

#### TO WHICH AUTHORITY? WITH WHAT POWERS?

#### PRACTICAL CASE(S)

- When recruited by a private firm, a retired, dismissed or fired civil servant forgets to inform his hierarchy
- The Court of accounts detects cases of conflict of interest not known by the authority in charge of collecting declaration

#### BEST PRACTICES

In general, one can find two distinct types of system, with the public officials being required to submit their declarations either to the agency that employ them or to a central agency that is responsible for the collection of assets and interests' declarations. There is a variety of central agencies which perform this role, including supreme audit institutions, anti-corruption bodies and tax authorities. Additionally, some States have separate systems for certain categories of officials such as the judiciary or elected representatives.

The practical requirements for the implementation of the assets and interest's disclosure regime often present challenges for public officials. Therefore, many countries have taken specific measures to facilitate the submission process, to build the capacity of public officials and to entrust oversight bodies with the management of the asset disclosure system, as well as to raise the awareness of public officials and the citizens of the importance of the disclosure.

The most common type of support is the availability of guidance on the completion of the declaration in either paper format or on the website in cases where electronic submissions are possible.

Some countries maintain help desk facilities to provide advice to officials filing declarations.

Three ways are commonly used to check declarations:

- At random
- For very sensitive positions (i.e. In France before appointing a minister)
- After denunciation or information

The two main methods of verification used are electronic checks undertaken against other databases of relevant information and the manual examination of the declarations. In some cases where electronic techniques are used, they serve the purpose of identifying high-risk submissions which would then be subjected to manual verification. In other cases, such as in those States which compared the information included in the declaration to other governmental databases, the electronic verification constituted the complete process.

In many countries, the verification is undertaken by the agency tasked with receiving the declaration, but in some cases the verification process can be undertaken by a separate body, such as the tax authority.

## LEGAL FRAMEWORK

### Lebanese legal provisions

#### Law on Declaration of Patrimony and Interests and Punishing Illicit Enrichment (as amended by the Committee on Administration and Justice and thereafter the Sub-Committee derived from the Joint Committees)

##### Law 189 (as amended)

#### Article 5: (amends Article 5 of old law which gave the authority of accepting declarations to several different public bodies depending on the nature of the employment)

New law states that all declarations are submitted to the NACC. Members and president of NACC submit their declaration to the Presidency of the Council of Ministers. However, until the formation of the NACC, declarations are submitted similarly to the method used in the old law.

#### Article 6: (remained similar to old law)

All bodies responsible for collecting declarations must submit a circular announcing that.

### Recommendations

The anti-corruption authority is the right authority. Receiving declarations of assets as well of interests, denunciation from whistle blowers as well as triggering clues from ministries and/or oversight bodies, this authority could be entitled to perform controls and make investigations with judicial means.

This also means that its future status will entitle its members to detain judicial powers and that an efficient coordination will be made with the penal prosecutor to strictly determine if this authority would also be entitled to qualify a case as a penal offense of conflict of interest.

If so, a question will remain: in case of detection by the COA or the CIB of conflict of interest, will it be an automatic seizure of the NACC or not, such a solution could be negotiated with the penal prosecutor office both to protect the rights of defence and to avoid shortcuts or conflict of interpretations that could generate risks of a feeling of impunity in the citizens mind and enhance the lasting of procedures.

## PUBLICIZING

### PRACTICAL CASE(S)

- Some interests were unknown by the tax administration (assets, incomes...).
- Some information are very confidential, given to the public they could affect the legitimacy of the official (i.e. personal level of wealth due to inheritance, amount of salary).

### BEST PRACTICES

#### According to OECD<sup>8</sup> :

- Public officials and public organisations are expected to act in a manner that will bear the closest public scrutiny. This obligation is not

<sup>8</sup> Op.cit OECD, 2006

## CHAPTER 1

### PREVENTIVE MEASURES: DISCLOSURE

fully discharged simply by acting within the letter of the law; it also entails respecting broader public service values such as disinterestedness, impartiality and integrity.

- Public officials' private interests and affiliations that could compromise the disinterested performance of public duties should be disclosed appropriately, to enable adequate control and management of a resolution.
- Public organisations and officials should ensure consistency and an appropriate degree of openness in the process of resolving or managing a conflict-of-interest situation.
- Public officials and public organisations should promote scrutiny of their management of conflict-of-interest situations, within the applicable legal framework.
- Public officials are expected to act at all times so that their integrity serves an example to other public officials and the public.
- Public officials should accept responsibility for arranging their private- capacity affairs, as far as reasonably possible, so as to prevent conflicts of interest arising on appointment to public office and thereafter.
- Public officials should accept responsibility for identifying and resolving conflicts in favour of the public interest when a conflict does arise.
- Public officials and public organisations are expected to demonstrate their commitment to integrity and professionalism through their application of effective conflict-of-interest policy and practice.

Transparency of assets and interests disclosure systems is often promoted based on the belief that the access of the general public to the declarations of assets and interests encouraged reporting and facilitated the detection of corruption.

Countries are divided into three categories in relation to transparency: all information in the declarations is made public, some information is

made public, or no information is made public. In the second category, the restrictions on which information is made public is related to either the type of information or the category of the official making the declaration. Typically, in these semi-public systems, any information thought to compromise the security of the official is withheld.

In systems where the publication of data is linked to the position of the official, the information is made public or not depending on either the security of certain categories of public officials or whether the information is considered to be in the public interest.

The information is made publicly available in either electronic or paper format; further, the information is either proactively made freely available or an individual seeking the information has to apply to obtain it.

## LEGAL FRAMEWORK

### Lebanese legal provisions

Article 8 of the new law 189/2020 protects the confidentiality of declarations.

### Recommendations

This legal confidentiality would inevitably reduce the deterring impact of the law, and as a practical effect will constitute an obstacle to whistleblowing.

So, externally, we strongly recommend publicizing as much as possible the disclosure of interests of officials concerned to strengthen the necessary transparency that should frame this policy against CONFLICT OF INTEREST.

## CHAPTER 1 PREVENTIVE MEASURES: DISCLOSURE

Internally the recommendation is ensuring transparency with regard to the interest held.

Making each public servant's interest known to his/her immediate superior first of all, and to his/her colleagues and other members of the commission or deliberating assembly for elected officials, and then possibly to other interlocutors, may well be enough to defuse the conflict of interest risk before it takes shape.

A public announcement of an interest at the start of a collegial decision-making session connected with the interest concerned may also enable any doubts to be dispelled.

Electronic means under the scrutiny of citizens and committed media or NGO could be used to diffuse such information

### PROCEDURE

#### PRACTICAL CASE(S)

- In case of change during the appointment (marriage, inheritance, new incomes...), should the official take the initiative to declare?
- If an official has not all the information needed (i.e. value of assets) or honestly misinterprets what is expected, has he the benefit of good faith?
- If interests disappear (i.e. divorce, disability to hold a full-time position...), what could be the procedure?
- 5 years after leaving a position is there a right of forgetting?

- What in case of mistake? Is there a right of correction?

#### BEST PRACTICES

Organisational procedures should enable public officials to identify and disclose relevant private interests that potentially conflict with their official duties. Such procedures should make public officials aware that they must promptly disclose all relevant information about a conflict when taking up office (initial disclosure), and later, when relevant circumstances change (in-service disclosure).

An effective disclosure process ensures that the responsibility for providing sufficient details on the conflicting interest rests with individual officials, and this requirement is explicitly communicated in employment and appointment arrangements and contracts.

Disclosure of a private interest does not in itself resolve a conflict, however, it enables the necessary steps to be taken to determine what measures are needed to resolve or manage the conflict positively.

These options could range from divestment, recusal or restriction of activity (through transfer and other re-arrangements), up to resignation, if the conflict of interest cannot be resolved in any other way.

Organisations need to clearly record both disclosed private interests and the measures taken in a particular case for resolution to demonstrate that a specific conflict has been appropriately identified and managed.

## CHAPTER 1

### PREVENTIVE MEASURES: DISCLOSURE

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

Section II, articles 2 to 9, of the law 189/2020.

##### Recommendations

Every 6 months the authority will publish the names of people having refused, missed or provided wrong information to the authority.

#### SANCTIONS

#### PRACTICAL CASE(S)

- Can an official be sanctioned both disciplinary and criminally without breaking the rule “non bis in idem” (we cannot be sanctioned two times for a same offense)?
- How to prove that the lack of declaration or missing elements are intentional and not due to forgetting or mistake (in other terms, who is in charge of the burden of the proof)? Can the offender appeal against the decision to be sanctioned and if so to which authority?
- Is the level of financial sanctions enough to deter any important fraudster to take the (far more important) benefit of a conflict of interest?

#### BEST PRACTICES

It differs from countries within a broad range of different administrative and criminal sanctions. The most frequent are fines, reductions in salary and dismissal from service.

In relation to the submission of false statements, there is a wider variety of sanctions; some States parties having the option of a custodial sentence in serious cases.

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

**Law on Declaration of Patrimony and Interests and Punishing Illicit Enrichment (as amended by the Committee on Administration and Justice and thereafter the Sub-Committee derived from the Joint Committees)**

**Law 189 (as amended)**

##### Article 7:

It is considered a condition for employment to submit the declaration. Therefore, whoever fails to do so (within the proper period) is de facto considered laid off.

Upon failure to submit the declarations, the NACC informs the central financial auditors to stop the transfer of the employee's salaries, benefits, pensions until the employee submits his/her declaration.

In this case, a % of 10% is deducted from the financial rights of this employee as a form of fine for the delay in submitting the declaration. In the case where the employee acquires any of the financial rights referred to above despite not submitting his/her declaration, they are considered a debt for the government treasury, subject to the legal interest rates if not settled.

##### Article 8: (similar to Article 7 in old law)

All declarations are of confidential nature. Whoever discloses anything related. To these declarations is punished by one-year imprisonment and a fine of 5-15 times the

## CHAPTER 1 PREVENTIVE MEASURES: DISCLOSURE

official minimum wage or either of these punishments. This confidential nature is not towards the NACC, attorney general, and the pertinent jurisdiction.

### Article 9: (similar to Article 6(4))

Whoever submits a fraudulent declaration is subject to 6 months to 1-year imprisonment and a fine ranging from 10-20 times the official minimum wage.

### Recommendations

Here, as already recommended above, the declaration should not be confidential and to protect any misuse of these potentially sensitive publicized information by third parties, specific sanction should be determined against malignant people.

## LINK BETWEEN DECLARATION OF ASSETS AND DECLARATION OF INTEREST

### PRACTICAL CASE(S)

- Is there a systematic presumption of illicit enrichment when assets are increasing during to the appointment of an official without any link to the amount of his regular wages/salary?

### BEST PRACTICES

The goal of the assets declaration system to ensure that the proceeds of corruption will not be concealed is particularly relevant for countries that have introduced in their criminal legislation the offence of “illicit enrichment”, in accordance

with article 20 of UNCAC; in those cases, assets disclosure may become an effective tool to support enforcement of that legislation.

Article 8, paragraph 5 of the UNCAC refers to the imposition of assets declaration requirements on public officials as a tool in the prevention of conflicts of interest. Specifically, this provision requires

*“States parties to endeavour to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials”.*

States have demonstrated a variety of approaches as regards the type of information requested from public officials and the methods used to monitor and assess the information provided.

Key emerging themes include the prevalence of central, independent authorities charged with monitoring the implementation of asset declaration requirements and the increasing use of information technology tools to carry out these tasks.

In its resolution 7/5, the Conference of the State parties of UNCAC, emphasizes

*“the need to properly manage conflicts of interest and to establish asset disclosure systems, encouraged States parties to promote, in accordance with the fundamental principles of their legal systems, the adoption, maintenance and strengthening of systems that promote transparency and prevent conflicts of interest and, where appropriate, to make use of innovative and digital instruments in this field”.*



## CHAPTER 1

### PREVENTIVE MEASURES: DISCLOSURE

One of the key distinctions that could be drawn between the systems in States parties is whether a central, independent body is used to monitor the asset declarations of public officials or whether it is left to the discretion of the government entity in which a public official works to assess the information provided.

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

The draft law about COI includes a mix of assets and interests.

##### Recommendations

None

## B. DATABASE FOR LOBBYISTS

#### PRACTICAL CASE(S)

- Many MPs, officials have relations with lobbies, but nobody knows the existence of these relations that could be just informal (influence, political community...).
- Organizations and firms are not always known as lobbyists, but they are using their power of influence on public actors to support their own interests.

#### BEST PRACTICES

France has set up a specific and publicised roster concerning lobbyists and groups or institutions of influence. This information contributes to public awareness and can display any relations based on conflict of interest that could occur between private interest and officials.

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

Concerning lobbying, there are no provisions in the Lebanese law prohibiting it (i.e. the presence of an association named: "Lobbying for Legislation"). However, there are also no legal provisions defining lobbying in the law either.

**Article 13 of the Lebanese Constitution** states about freedom of assembly and liberty in forming associations.

##### Recommendations

The creation of a database for lobbyist and its publication could support whistle blowing mechanisms as well as an extent of the scope of article 1 to MPs and politicians detaining an electoral mandate.



## CHAPTER 2

# PREVENTIVE MEASURES: RESTRICTIONS

### A. CONDITIONS FOR APPOINTMENT (TO HOLD A PUBLIC POSITION)

#### PRACTICAL CASE(S)

- How many years are expected between the end of a previous job in a private firm and an appointment in a public position entitled to have any power of decision concerning this firm (grants, procurement, authorizations, tax...)?
- If someone had a former interest with a firm (employment for instance) and if he holds a public position in an administration in contact with this firm (contract, procurement), can he be suspected of conflict of interest if, in his attributions, he has no link with the administrative decision making power concerning this firm?
- What about risks of influence? Potential future conflict of interest (when recruited he has no power of decision but after promotion he could have?)

#### BEST PRACTICES

Added to prohibitions linked with private interests, some countries (i.e. Albania) implement integrity tests to the applicants when recruiting public agents.

Such tests based upon written questionnaires and interviews are made to detect 4 cases of risky persons who are: people already in trouble with justice, weak people facing overloaded financial situation in their personal life (addiction, loans, alimonies), people with inappropriate behaviour with others or hierarchy having already troubles in their past jobs, manipulators.

In other country, the past of appointee is also scrutinized: for instance, the French High Authority looks at the last five years environment of people to assess potential risks of conflict of interest.

In EU public agencies, recruited person should provide information about their previous employments, any contracts they could have in performing services as consultant or advisor, any non-remunerated positions or mandates of legal representation they could have had.

As part of selection, processes require identification in advance of relevant interests, and discuss possible strategies for resolution of identified conflicts; obtain appropriate clearances (such as tax clearance certificates), declarations or undertakings, to identify and deal with potential conflict-of-interest situations at an early stage.

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

None

##### Recommendations

Even if Lebanon is not currently in a phase of recruiting new civil servants, some specific measures could be taken for the future. These measures could include specific interrogations regarding exigence of knowledge of principles of ethical behaviour and penal offenses in competitive exams and implementation of integrity tests.

## **B. CONDITIONS TO LEAVE A PUBLIC POSITION TO A PRIVATE ONE (REVOLVING DOORS)**

### **PRACTICAL CASE(S)** \_\_\_\_\_

- How many years after leaving a public position, the risks still exist?
- Is the restriction limited to a geographical zone? (could a magistrate of Beirut become a lawyer in Byblos?)
- Has the future recruited to ask first an authorization to leave the administration?
- What could be the sanctions: obligation of dismissal from the new private job, penal sanctions?
- If changes happen during the second year after leaving, putting the former official in a situation of conflict of interest, to which authority he should declare this change (ex-public employer, anticorruption authority)?

### **BEST PRACTICES** \_\_\_\_\_

A revolving door phenomenon is the movement of professionals from government and public administration to private companies or social entities. It produces conflicts of interest and the possibility of corruption.

In these cases, officials have « sold » their power or influence to a private firm against the promise of a future recruitment after they retire from their administration.

It has increasingly drawn attention because of the numerous scandals that have come under the public spotlight.

Prohibitions or restrictions on activities in the private sector by public officials were extended by a number of States beyond the actual period of employment, with many States applying a 6-month to 5-year post-employment prohibition (“cooling-off period”) on such activities.

Restrictions concern functions, location and time.

For their implementation, it is needed:

- Revolving doors commission to give prior authorization
- Authority in charge of controlling
- Sanctions
- Rights of defence and specific ways of procedure
- Publication of sanctions

For example, China applies a 3-year restriction, reduced to 2 years where the individual held a junior public position.

Similarly, in France, civil servants are prohibited from working for companies that have been supervised, controlled, or contracted with the office where the civil servant worked over the last five years.

In Germany, a waiting period of three to five years applies. All civil servants, including retired officials, must inform authorities prior to taking up employment outside of the public service.

However, while many States have enacted prohibitions or restrictions on activities in the private sector, UNODC evokes that many also highlighted the challenges they face in implementing

## CHAPTER 2

### PREVENTIVE MEASURES: RESTRICTIONS

such measures. As an example, Armenia noted that many public officials, despite a legal prohibition on such activities, did in fact hold significant business interests, with this being particularly prevalent among elected officials.

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

The civil servant Charter (legislative decree n°112/1959), article 98 and 100

##### Recommendations

Enforcing the provisions already existing (each Ministry responsible for the oversight of its leaving public servants pending the creation of the anti-corruption authority).

Specific awareness should be provided to all the exiting people before their departure as well.

The best solution would be to install a specific commission which will give compulsory visa to the recruitment of ex-public agent by a private firm before it may happen.

The NACC should be informed of the future assignments of leaving civil servants and entitled to check the reality of their new positions within a delay of 5 years.

## C. NORMS RELATIVE TO GIFTS AND LIBERALITIES

#### PRACTICAL CASE(S)

- The Lebanese Penal Code clearly stipulates in Articles 351 and 352 that any public official who accepts (on his own behalf or on someone else's behalf) a gift or a promise or any other benefit to perform a legal or illegal action within his scope of work is punished with 3 months to 3 years imprisonment and hard labor respectively. However, there is no clear definition as to what "gift" refers to, leaving it to the discretionary power of judges to determine and define the scope of what a gift means.

Real cases of this were found very commonly in the Lebanese judiciary:

- A judge sued the man who tried to bribe him with a Rolex watch valued at 35,000 USD in return for his abstention from the trial. The Attorney General of the Supreme Court prosecuted the bribers (thus considering this "gift" a bribe).<sup>9</sup>
- The large-scale campaign against judicial interference in 2019 exposed that several judges and rapporteurs in the Beirut courthouse were accepting various gifts in return for judicial favors. This was supported by evidence used in their phone communications. However, the case was eventually closed since many of its opponents believed the gifts were simple ones, such as a box of fancy chocolates, or a pen or a dinner invitation. However, others believed that the problem was with the identity/position of the briber; why would an indicted give a judge such a gift before his/her trial?<sup>10</sup>

<sup>9</sup> <https://www.lebanon24.com/news/lebanon/39320/ساعة-رولكس-للتنحي-قاضي-عن-قضية>

<sup>10</sup> <https://elfasad.polimeter.org/b/promise/13115>

## CHAPTER 2 PREVENTIVE MEASURES: RESTRICTIONS

- A judge allegedly proven to have accepted 3 million USD in 2018 as a bribe; however, he was only forced to quit his job as a judge, and no other action was taken against him due to political interference.<sup>11</sup>
- What happen if there is no link between a gift and a decision taken?
- Gift perceived have to be declared to who? Then what is the fate for the gift (the official has to pay to the administration the price for keeping it? It's a prize to a Christmas tombola? It goes to a museum of gifts as belonging to the State? It's sold in public auction and the amount of the sale goes to the public budget?)

### BEST PRACTICES

Liberalities and gifts have to be particularly scrutinized. Specific measures regarding occasions, amounts and quality of receivers should be adopted or globally or by ministries (based on risks assessment).

Norms implemented internationally totally differ from one country to another, some of them totally refuse that a public agent may get any type of present, no matter its value, when others limit the amount commonly to an average around \$50 per year.

Others also consider that, before forbidding, it first needs to see if there is any connection between gift and the position/action of the receiver and the giver.

At last, others estimate that it is cultural (Arabian, African, south Asiatic and Balkans countries) and have no effect on the running of public services.

Such measures represent good practices as regards the implementation of Article 8, paragraph 6 of UNCAC, which requires State Parties to consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with the requirements of the Convention.

### LEGAL FRAMEWORK

#### Lebanese legal provisions

None

#### Recommendations

The best solution would be to forbid totally any type of gift or liberality even though the amount is low except for diplomatic presents that are given to the institution.

If a full prohibition linked to specific regulations which would be adopted for fixing/prohibiting cases and amounts of gifts and liberalities is not possible, measures should be taken for the Ministers to transmit any trespassing situation for investigation to the CIB (or directly to the penal prosecutor) as well as ways to enforce confiscation of the ill-gotten assets earned because of the conflict of interest.

<sup>11</sup> <https://al-akhbar.com/Politics/254152>

## CHAPTER 2

### PREVENTIVE MEASURES: RESTRICTIONS

## D. PROHIBITIONS AND RESTRICTIONS

### PRACTICAL CASE(S)

Concerning conflict of interest between politicians and banks:

Based on a study<sup>12</sup> in 2016 found that 8 political families in Lebanon control 32% of all assets of the banking sector. It showed that 18 out of the 20 largest banks in Lebanon had extremely amicable relationships with political figures (present and former), whether through the ownership of these figures or their relatives shares in the banks, or through their appointment in the boards of directors or as executive officers within them. The effect of this is the provision is that bank loans which are usually allocated for smaller depositors may be assigned to politicians on the basis of their bank relationship instead.

- Additionally, the Special Investigative Commission of the Central Bank has as members: the Central Bank governor, a judge appointed by the Higher Banking Commission, the President of the Banking Control Commission, and 2 members appointed by the Government, which can constitute a conflict of interest, especially when members of the Government own shares or are board members of banks.

Concerning conflict of interest between politicians and justice:

- Another explicit example of COI in Lebanon has been when a former Ministry of Justice kept his law firm operational, whereby his signature was not direct, however his law firm was signing on his behalf.

### BEST PRACTICES

The application of prohibitions and restrictions on the activities, interests and assets of public officials was the main legislative means to prevent conflicts of interest referenced by States.

Such prohibitions and restrictions are applied through a range of different legislative measures with States often combining criminal, civil and administrative law to produce a framework of responsibilities for public officials.

These prohibitions and restrictions can concern:

- **General prohibitions applicable to all the officials:** Common general prohibitions include a prohibition on holding office or performing any activity which is incompatible with professional duties and the use by a public official of his position for his private advantage or personal gratification
- **Prohibitions and restrictions relating to activities in the private sector:** States as Armenia, Bulgaria and Burkina Faso placed an absolute prohibition on such activities whereas in a number of other States, including Austria and France, public officials were entitled to receive income from private activities where specific authorization had been given or up to a certain level of income). In Tunisia, public officials may not have any interest in an entity which is subject to the control of the public body for which they work if that interest compromises their independence. Where a public official breaks this prohibition, he will be guilty of a criminal offence with an applicable penalty of two years imprisonment. In France, civil servants are prohibited from holding stocks in a firm subject to oversight by the office where he or she works. Ministers and Members of Parliament are prohibited from

<sup>12</sup> study conducted by Jad Chaaban in 2016

## CHAPTER 2 PREVENTIVE MEASURES: RESTRICTIONS

holding board positions or acting as officers at private entities while they are exercising their electoral mandate. However, as in Japan, civil servants may be authorized on a case-by-case basis to perform private sector activities.

- **Specialized written standards for specific areas of public administration** (specific for police, customs, tax department, justice...)

### LEGAL FRAMEWORK

#### Lebanese legal provisions

Additionally, to the prohibitions already seen in the previous chapter, Lebanon imposes other restrictions:

- Article 14 of the code of civil servants provides that they cannot have any other paid or unpaid job, if this job will undermine the dignity of their job.
- Paragraph 4 of article 15 replaced by virtue of article one of the decree n° 15703 dated 06/03/1964.
- Lebanese Constitution: article 49 concerning Presidency and article 28 for Ministers.
- Electoral law (n°171/2000) article 29
- Law of Public accounting (legislative decree n°10/1954 which for bids concussion)
- Legislative Decree No. 115/1959 (Establishment of Central Inspection), Article 5(9)
- Law of Cash and Credit; and the Establishment of the Central Bank (Decree No.13513/1963) article 20 and 23.

#### Recommendations

The current legal framework clearly is not sufficient in tackling these areas of COI, as there is no explicit provision in the law of the

establishment of currency and credit stating that there cannot be a mix of these 2 roles.

As well the current legal framework does not explicitly state that Ministers cannot combine their civil service appointment with their private work, (or their legal profession for this case).

However, this can shape a case of conflict of interest, since many lawyers enter public service throughout their careers.

## E. SPECIFIC MEASURES FOR PROCUREMENT

### PRACTICAL CASE(S)

- Concerning government procurement, if the three main principles of procurement are found (public, equal, and competitive) then the deal is legal. Thus, if a municipal governor/minister/deputy's private company was the company with which the government concluded the procurement agreement, it is considered a done deal if it satisfied the 3 conditions above. If it did not satisfy them, it will be considered null. (Law of Public Finance Article 120 to 157). No explicit provisions prevent private companies owned by ministers/deputies/mayors from winning the deal.
- If a public servant has interest with a contractor though is not working for the procurement department but for the IT or financial department which are in charge to collect data or to pay this contractor, is there a conflict of interest?



## CHAPTER 2

### PREVENTIVE MEASURES: RESTRICTIONS

#### BEST PRACTICES

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Procurement is the riskiest area of the public action. According to a study carried out in 2014 by the OECD, 57% of cases of corruption are linked with this specific mission.

Dealing with procurement process, regardless of the step and the task are considered as highly risky because of the most important exposure of civil servants in charge of these to temptation. OECD also invites States to negotiate with the private sector legal provisions or, at least, common awareness actions to both the administration and the private bidders.

#### LEGAL FRAMEWORK

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##### Lebanese legal provisions

A reform of public procurement is underway.

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##### Recommendations

We recommend that specific measures should be taken concerning public agents in charge of dealing with procurement procedures (members of selection commissions, civil servant in charge of contracting and controlling the execution, financial staff in charge of paying private contractors).

## CHAPTER 3

# PREVENTIVE MEASURES: ENFORCEMENT



## CHAPTER 3

# PREVENTIVE MEASURES: ENFORCEMENT

### A. PUBLIC AWARENESS MEASURES

#### PRACTICAL CASE(S)

- Citizens are often ignorant of possible personal interests hidden behind decisions and when they finally know them it is too late to intent a plea against administration.
- Citizens think it is normal that people, belonging to a same political/religious party/community of an official, benefit from priorities given by this person.

#### BEST PRACTICES

Transparency of public administrations and commitment of the population are key in the reduction of conflict of interest situations. On one side, public agents should be accountable of their acts (i.e. French declaration of human and citizen rights – article 115), on the other, citizens are both victims and watch dogs. They can play an important role in the reduction of conflict of interest situations.

Public awareness should be raised as reminded by articles 10 on public reporting and 13 on participation of society of the UNCAC.

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

Law n°28/2017 on the right to access information, articles 8 and 22.

#### Recommendations

Public awareness campaigns set up by OMSAR could support the implementation of the decree proposed as an emergency measure.

Such a campaign could consequently put a stronger stress on civil servants knowing that citizens are duly informed of their obligations. In a second time, once provisions about the protection of whistle blowers will be adopted, this awareness policy could be reinforced to stimulate denunciations.

The article 8 of the new law 189/2020 protecting the confidentiality is irrelevant with such a need of transparency and should be modified.

### B. AUTHORITY IN CHARGE OF INFORMING AND MONITORING

#### PRACTICAL CASE(S)

- If it seems evident that the Authority in charge of collecting declaration of interests should be in charge of informing and monitoring measures to deal with conflict of interest, what can be the responsibility of the employer (administration, ministry...), the hierarchy of the official, colleagues of the offender, other oversight bodies?

## BEST PRACTICES

States are mainly employing two different approaches in establishing the institutional framework for the prevention and the management of conflicts of interest. Some States have established specialized institutions tasked with overseeing asset and interest disclosure, providing ethics advice and enforcing the specialized conflict of interest legislation. In contrast, others have established a system in which the management of conflicts of interest was carried out by the managers and supervisors in public institutions as a part of their regular functions.

The management of conflicts of interest is often seen as part of the prevention of corruption, which led to a decision to entrust an anti-corruption body with conflict of interest management functions. This is mostly the case in countries where specific anti-corruption and conflict of interest laws have been adopted.

*See article 6 of the UNCAC on preventive anti-corruption body or bodies.*

## LEGAL FRAMEWORK

### Lebanese legal provisions

The law 189/2020 entitles the NACC with such a power.

### Recommendations

Specific provisions concerning the CoA and the CIB could be added to the law to make them able to detect conflict of interest in their oversight attributions and refer to the NACC.

## C. TRAINING FOR PUBLIC AGENTS

### PRACTICAL CASE(S)

- Many low or medium ranking civil servants have no precise ideas of what a conflict of interest can be, mostly because it is not always taught in their studies or because it is a custom or a culturally accepted practice.

### BEST PRACTICES

Many States focus on the training provided to public officials and other awareness-raising activities carried out to facilitate their reporting of acts of corruption. Common tools include anti-corruption publications, training sessions for new employees and broader media campaigns to raise awareness levels regarding existing reporting mechanisms.

For example, France considers with interest the training provided to public officials regarding their reporting obligations under the Penal Code and the available reporting mechanisms; in sectors defined as “at risk”, such as public accounting (public accountants have to take the oath in front of financial magistrates), specific awareness campaigns are implemented through circulars.

Two very significant international examples are put forward by **UNODC**:

- Poland noted two handbooks recently published by its Central Anti-Corruption Bureau specifically aimed at civil servants and entrepreneurs, respectively. The handbooks have been accompanied by 560 training events for over 13,000 civil servants in which topics

## CHAPTER 3

### PREVENTIVE MEASURES: ENFORCEMENT

addressed in the handbook are discussed.

- Malaysia reported a number of innovative awareness-raising measures aimed at encouraging the reporting of suspected acts of corruption including a Road Show publicizing the provisions of the Anti-Corruption Act, the development of a drama based on a successful anti-corruption operation and public recognition being accorded to reporting persons. Malaysia noted a significant increase in the number of arrests made in relation to corruption offences following the introduction of these initiatives.

**According to OECD**, senior officials, by their demonstrated leadership commitment, set a personal example to others when they arrange their private-capacity interests in a manner that preserves public confidence in their integrity and the integrity of their organisation. The interests of the organisation, the public interest, and the legitimate interests of the employee must be balanced when managers seek to resolve or manage an actual conflict situation. They create a partnership with employees that develops an open organisational culture. The wide publication of the organisation's rules and procedures, and provision of advice to public officials, who are in doubt, are needed to support the effective application of the policy.

Discussions involving staff, either in training or in the actual workplace, where real-world examples are considered, can be used to improve skills in identifying and resolving conflicts in day-to-day work.

An open management culture would encourage employees to take part in the review of existing CONFLICT OF INTEREST policy and practice: consultation with staff on future prevention measures can build a common understanding of the issues, and can also create an organisational culture where dealing with conflict-of-interest matters can be freely raised and discussed.

## LEGAL FRAMEWORK

### Lebanese legal provisions

None

### Recommendations

Carry out risks mapping and assessments for each category of public service and develop general programmes of training for all civil servants as well as specific trainings if needed in some ministries.

Civil servants could perform tests.

See OECD toolkit on Managing Conflict of interest in the Public Sector.

[www.oecd.org/gov/ethics/49107986.pdf](http://www.oecd.org/gov/ethics/49107986.pdf)

## D. CODES OF ETHICS

### PRACTICAL CASE(S)

- The lack of a code of ethics leads to a weak, not to say an absence of, awareness of public servants on this issue and, at the same time, if a code of ethics is not publicized, the citizen has no clue of what is expected as a fair and correct behaviour from the civil servants.

### BEST PRACTICES

The introduction of a public sector ethics regime and the adoption of codes of conduct are important tools to effectively prevent and manage conflicts of interest.

There are many approaches to regulating public sector's ethics, but the ultimate goal is always to

ensure that public officials know the boundaries of acceptable conduct and work in a way that promotes the effectiveness of institutions and public trust in those institutions.

Most of the States have codes of ethics and/or codes of conduct, which they see as an important tool in regulating conflicts of interest. In some countries, codes were adopted through a legislative process or were a part of a law, while others developed aspirational codes to serve purely as guidance for their officials. **While there is no single model for a code of conduct, there is a common understanding of the value of this instrument.**

*See article 8 of the UNCAC on Codes of conduct for public officials*

## LEGAL FRAMEWORK

### Lebanese legal provisions

Different projects of Code of Ethics (general code, procurement...)

### Recommendations

Codes of ethics concerning each relevant mission or administration (such as justice, procurement, recruitment, police, customs, tax ...) should be elaborated to set up a pragmatic framework of principles and enforce the commitment to right behaviour from all the civil servants.

## E. FORMAL COMMITMENT

### PRACTICAL CASE(S)

- Young people when recruited are often carefree or reckless and don't perceive the real signification of their responsibilities as a civil servant.
- Taking the oath in front of an assembly of judges is more impressive and has a far stronger impact than just reading a code of conduct implemented in the administration where a young civil servant has just been recruited.

### BEST PRACTICES

As a method of encouraging public officials to uphold the principles of integrity and transparency in their professional work, and thereby avoid potential conflicts of interest, a number of States have adopted domestic provisions outlining the basic principles public officials are required to uphold while exercising their official responsibilities. Significant efforts must be done to promote integrity, honesty and accountability among public agents during the accomplishment of their duties. Formal and official commitment of each public agent can be required when appointed.

As an example, the Philippines use of a general declaration in the Code of Conduct for public officials, which outlines the fundamental principles and values applicable to them. The Code provides, inter alia, that public officials "must at all times be accountable to the people, serve them with the utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives".

In the US, all civil servants must take an oath of office by which they swear to discharge faithfully

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### PREVENTIVE MEASURES: ENFORCEMENT

the duties of office. This requirement is expanded in the standards of conduct of the executive branch, which provides that “Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain”. A more individualised form of declaration is required from certain Presidential appointees in the form of an “ethics pledge”.

Similarly, the Code of Conduct in Germany states that “public servants are required to serve the entire nation rather than a political party, to fulfil their duties in a just and non-partisan manner and, in exercising their professional duties, to take account of the welfare of the general public”.

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

Civil servants do not take an oath, but articles 14 and 15 of legislative decree 112/1959 (code of civil servants) specifies the duties and prohibited acts of civil servants.

Concerning central inspection, the Chairperson and members of central inspection board, and the general inspectors, inspectors and deputy inspectors take an oath before the president of the central inspection (article 6 legislative decree 115/1959).

Judges and lawyers also take an oath upon appointment.

##### Recommendations

Any person recruited on a position defined as sensitive should have to take an oath. All sensitive positions should be clearly listed and fixed by the law.

## F. SUPERVISING USE OF RESOURCES ALLOCATED TO ELECTED OFFICIALS AND STAFF

#### PRACTICAL CASE(S)

- Very often mayors (or staff of local authorities recruited by them) think that their election give them a legitimacy to do what they want with the local budget.
- Many mayors, in order to anchor their powers, use public money to build luxury premises (i.e. townhall), buy expensive IT devices or pay official lunches or dinners to their connections.
- A mayor uses the technical agents of his administration to work for building his own villa.

#### BEST PRACTICES

In most cases, the risk happens with local elected authorities (such as municipalities) and constitutes a classical deviance of the phenomenon of decentralization because of the distance between the central power and the local ones as well as the lighter (not to say the lack of) control.

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

It is the normal task of the Court of Accounts in Lebanon to perform financial, regulatory and performance audits and it is already included in the legal framework related to its missions and powers of investigation.

### Recommendations

Specific recommendations of the President of the Court of Accounts could strengthen the awareness of the financial magistrates in detecting cases of conflict of interest while performing their audits.

## G. MECHANISM OF COMPLIANCE

### PRACTICAL CASE(S)

- Considering that conflict of interest only concerns high ranking officials linked by the obligation of declaration and not anyone who is working in a public institution, which measures could be added?
- Considering that, once the declaration is made and matches criteria of appointment, no more control can happen afterwards in case of change, who could be in charge of supervising careers of civil servants?

### BEST PRACTICES

Adding to the system of mandatory declaration of interests presented below, some countries, as France, have developed a whole framework of rules to set up a system of compliance. This means that, for people who are not under the obligation of declaration (all the public agents) – reserved to highly ranked officials, sensitive positions and politicians – all the rules prohibiting CONFLICT OF INTEREST, except the obligation of declaration, have to be implemented (prohibitions, restrictions, reports on incidental cases...).

It creates a double speed system ensuring that if someone in a situation of conflict of interest was not caught through the net of declaration, he/she always can be caught for not being compliant with this framework, guaranteeing a total absence of immunity.

As well, it introduces a double system of monitoring: via the National authority in charge of receiving and controlling declarations and via internal systems of control specific to each administration or public agency which can be helped in that way by oversight bodies. The latter is frequently implemented by ethics officers (as it is the case for example with the Ethics office placed close to the headquarters of the United Nations at international level or in Croatia in every ministry at a national level).

Organisations need to consider reviewing existing management arrangements on a regular basis, to assess whether they remain adequate in recognising potential risk areas.

Changing practices and expectations, for example in areas such as additional employment and “outside” appointments, post-public employment, use of “inside” information, public contracts, new forms of gifts and other benefits, and different family and community expectations in a multicultural context, can generate new forms of risk.

A forward-looking management anticipates potential conflict situations and employs preventive measures that deal with emergent conflict situations, such as screening applicants before employment, and the adoption of meeting procedures that ensure that official decision-making is not compromised.



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### PREVENTIVE MEASURES: ENFORCEMENT

It is then recommended to:

- Perform regular assessment of the effectiveness of policy implementation.
- Review the implementation of policy and procedures on a regular basis and update mechanisms and procedures to ensure their relevance to a constantly evolving situation.
- Consider the relevance of current assumptions for example concerning the impact of new technology, which makes possible “day-trading” of stocks and shares via the Internet or tax declaration via databases, which in turn could necessitate daily disclosures of an individual’s changing pecuniary interests.
- Draw on surveys of private contractor and administration’s experience of risk, where appropriate, partly to engage a broader set of experience, and partly to indicate continuing commitment to the process of risk-management and safeguarding the administration’s integrity.

**According to OECD<sup>13</sup>**, it is also important to “develop an open organisational culture where conflict-of-interest matters can be freely raised and discussed:

- *Involving employees, their representatives and other interested parties 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.\**
- *Consulting 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.*

- *Assisting understanding by providing training for public officials to develop an understanding of the relevant general principles and specific rules, and to help them improve decision-making skills for practical application.*
- *Providing support mechanisms for assisting managers in reviewing and improving their skills in identifying and resolving or managing conflicts in their daily work.”*

## LEGAL FRAMEWORK

### Lebanese legal provisions

None

### Recommendations

A complete system of compliance with preventive, deterring, informative, training and monitoring measures should be set up and devoted to the NACC.

The full implementation of the new law 189/2020 implies that all Ministries/ administration would be responsible:

- **To give to the NACC the full list of public agents submitted to this new obligation of declaration in order for the NACC to set up an exhaustive roster to check if any of their agents concerned by declaration is duly informed of his/her obligation (it could be the responsibility of ethics officers)**

<sup>13</sup> OECD, Guidelines for managing conflict of interest in the public service, 2006



## CHAPTER 4

# REMEDIAL MEASURES: DIRECT

### A. INTERNAL MEASURES

#### REPORTING PROCEDURES

#### PRACTICAL CASE(S)

- Very punctual and unexpected (one shot) conflict of interest appears briefly in a career and no one realizes that an administrative decision has been taken on this basis.
- It may happen that a civil servant is not aware that he is in a situation of conflict of interest or that a mayor is voting for a municipal act concerning someone or some company he has indirect interests with.

#### BEST PRACTICES

**Reporting procedures** is one the key of the effectiveness of the conflict of interest management system. Monitoring mechanisms, such as management, internal controls and external audit, can be used to detect breaches of policy and take into account any consequences that resulted from the conflict.

The application of proportional and enforceable sanction in case of non-compliance, could provide evidence of the organisation's commitment to upholding its integrity policy. The sanctions may take the form of disciplinary measures or prosecution, which affect the appointment or career of the public official concerned,

Complementary management measures providing effective redress for breaches of the policy, in the form

of retroactive cancellation of affected decisions or tainted contracts, and exclusion of the beneficiaries from future contracts, can also be adopted.

Effective co-ordination of preventive measures and positive enforcement is a key element of successful implementation. The coherent integration of these measures into the existing legal, institutional and procedural frameworks promotes an organisational culture where conflicts of interest are properly identified and resolved or managed appropriately. It is necessary to ensure that management and internal controls as well as external oversight institutions – such as independent auditors or an ombudsman – work together to detect those who do not comply with required standards.

Appropriate reporting for independent oversight institutions and the publication of regular reports on the implementation of integrity-management arrangements and on the progress of any investigation, can play an important role in encouraging compliance with policy and discouraging abuse of the integrity-management process.

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

**The new law 189/2020 entitles the NACC to address complaints concerning declarations of interests.**

The Lebanese legal framework acts that complaints must be transmitted to the Central Inspection for treatment before any sanctions.

### Recommendations

Give Ministers specific attributions in order to automatically transfer cases of denounced conflict of interest to the NACC.

**Ministerial commission:** Such a commission could implement national measures at its ministerial level to fight corruption and conflict of interest and develop various actions to enforce compliance with the legal framework. It would receive findings of internal investigations of incidental cases and take measure to ensure an ad hoc procedure (CIB, penal prosecutor, NACC). Specifically, regarding limitation to future recruitment (revolving doors), all future appointment of a leaving civil servant should be submitted to this commission prior to authorizing any hiring contract as well as given for information and monitoring to the NACC.

**Ethics officers:** This position is considered as one of the best practices to limit risks. It completes the need to develop internal audit in administrations.

Ethics officers, directly linked to the Minister/ or the ministerial commission/ or the anti-corruption authority, could be recruited to ensure the enforcement of the law inside each administration by answering to the questions, promoting awareness, being the link with citizens (as well as for access to public information), protecting insider whistle blowers against retaliation, designing training programmes and redacting annual report on risks and measures concerning ethical behaviour.

### SPECIFIC ENFORCEMENT REGARDING CONFLICT OF INTEREST AT LOCAL LEVEL

#### PRACTICAL CASE(S)

- Some local contracts can be given to local firms because they are the best employer of the city or have financially supported the elections campaign.
- Decisions are just made as grateful actions for political clientelism.

#### BEST PRACTICES

As well as for procurement, the exercise of local responsibilities, especially for elected people can be an important area of risks of occurrence of conflict of interest.

Most of the time, decentralization is an open gate to conflict of interest because local authorities could have the possibility to abuse of their powers, being far from frequent controls of national oversight bodies and aiming their policies on supporting their clientelism.

Stronger and more frequent controls as well as a publicized list of interests should be done to prevent these issues.

Measures should be taken to invalidate any local decision adopted when an elected member of the authority is involved by his vote in a decision fulfilling his interests even though his single vote was not sufficient to adopt this measure.

## CHAPTER 4

### REMEDIAL MEASURES: DIRECT

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

Law 667/97 - Article 22 and article 28 on Municipal councils.

##### Recommendations

We strongly recommend that specific measures concerning municipalities and other local authorities which are in charge of adopting decision and budgets be taken to specifically create an added burden of accountability to the local elected people and officials.

Recusal registers and lists of interests should be made and publicized before each vote to be sure that no conflict of interest could occur.

The scope of implementation of the law 189/2020 should be extended to elected people of local authorities.

## B. EXTERNAL DENUNCIATION

#### PRACTICAL CASE(S)

- All the members of a local council are accomplice of cases of conflict of interest and the local civil servants are afraid to be fired if they denounce these facts; only external witnesses can reveal the offense.

#### BEST PRACTICES

It is essential to develop complaint mechanisms to deal with allegations of non-compliance and devise effective measures to encourage their use. It needs to provide clear rules and procedures for whistle blowing and take steps to ensure that those who report violations in compliance with stated rules are protected against reprisal, and that the complaint mechanisms themselves are not abused.

As an example, the Republic of Korea has established an independent anti-corruption authority, which runs a Corruption Report Centre: reports may be made by telephone, online, or by an on-site visit from a member of the Report Centre and to ensure high-quality counselling, retired public officials with significant experience are employed to work in the centre.

It also frequently done through a hotline.

#### LEGAL FRAMEWORK

##### Lebanese legal provisions

Law No.83/2018 on the protection of whistle-blowers: This law offers complete confidentiality and protection of the whistle-blower (articles 6 and 9) which promote the effectiveness of whistleblowing on issues of corruption, conflict of interest, and illicit enrichment.

##### Recommendations

Public awareness campaigns, in accordance with the NACC, the Central Inspection Board and the Court of Accounts, could be launched to implement the whistle blowing procedure provided by the law.

This procedure could find a juridical ground both on the laws concerning whistleblowing and access to public information.

The strengthening of actions implemented by the NACC and the COA in fighting corruption (including conflict of interest) will need to be supported in this way by collecting public information/ denunciations.

Then, once the NACC will be set up, a specific hotline to collect testimony and complaints as well as annual report on cases denounced should be made.

## C. RECUSAL AND RENUNCIATION MECHANISMS

### PRACTICAL CASE(S)

- During a session of a local council, one vote among a long list of points to be adopted, put the mayor in a situation of conflict of interest but he acts as nothing happens and go on assuming the presidency of the voting assembly.
- A former employee of a firm has been appointed by the Ministry of finance, after 3 years he is promoted to a position where he will control the taxes paid by his ex-employer.

### BEST PRACTICES

Where a particular conflict is not likely to recur frequently, it may be appropriate for the public official concerned to maintain their current position without participating in decision-making on the affected matters. For example, appoint an independent third party, or abstain from voting on decisions, or withdrawing from discussion of

affected proposals and plans, or not receiving relevant documents and other information relating to their private interest.

The option of re-assigning certain functions of the public official concerned should also be available, where a particular conflict is considered likely to continue, thereby making ad hoc recusal inappropriate.

Particular care must be exercised to ensure that all affected parties to the decision know the measures taken to protect the integrity of the decision-making process where recusal is adopted.

### RECUSAL REGISTER

For important categories of interests, and/or in the context of a specific operational goals (votes in local assemblies for instance) even though there is no obligation of declaration of interest enforced by law, a recusal register could be set up by each Ministry or local council as a preventive measure (i.e. France). This register will take into account its roster of bidders in procurement, beneficiaries of public grants or authorizations.

Recusal may also concern community responsibilities and personal connections, in particular with regard to recruitment and urban-planning policy.

This procedure is very useful for elected (local) people when they have to vote, as well as civil servants in charge of open-to-risks positions (recruitment, procurement...).

When several recusals are required in the course of a deliberating assembly, the meeting's agenda may be organised to ensure that the least amount of time will be taken up by members' leaving the session, with the help of the register of elected officials' interests.

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### REMEDIAL MEASURES: DIRECT

Registrations and declarations of private interests, as well as the arrangements for resolving conflicts, should be clearly recorded in formal documents, to enable the organisation concerned to demonstrate, if necessary, that a specific conflict has been appropriately identified and managed.

Further disclosure of information about a conflict of interest may also be appropriate in supporting the overall policy objective, for example by demonstrating how the disclosure of a specific conflict of interest was recorded and considered in the minutes of a relevant meeting.

- taking part in preparatory meetings;
- leaving the room when the time for making the collegial decision comes round;
- dissemination of the recusal procedure's content to individuals concerned.

**Any public body concerned by this recusal procedure should be able to present on request a comprehensive history of events and measures taken to the oversight bodies (NACC, CoA, CIB).**

## LEGAL FRAMEWORK

### Lebanese legal provisions

None

### Recommendations

We recommend adopting recusal preventive measures.

Recusal is a major tool for avoiding conflicts of interest; it consists of not seeking, preparing or giving an opinion on a decision that would ordinarily fall within one's area of responsibility, in order to avoid a conflict of interest.

Recusals are organised in several steps:

- identification of the subject/ matter requiring an individual's recusal;
- organisation of the recusal procedure with delegation of decision- making and signature authority (no instructions may be given to the delegated);
- prior publicity so as not be informed of factors bearing on the decision; not

## RENUNCIATION OF INTEREST

If a conflict of interest situation cannot be resolved by a recusal, or when the interest in question is of such nature that it is possible to give it up (financial interest in particular), the best prevention method could be renunciation of the interest.

As an example, it is possible to give up voluntary functions, such as chairperson of an NGO/political organization or board of directors in State owned enterprise, if such chairpersonship creates a conflict of interest situation.

More generally, public officials may be asked to give up a function performed alongside their public office if such function places them in a conflict of interest situation, in particular if the recusal measures necessary to prevent a conflict of interest risk would prevent them from carrying out their public duties to full effect.

### Lebanese legal provisions

None

### Recommendations

Renunciation of a financial interest may be recommended when such interest creates a conflict of interest.

It may be considered that any interference connected with this type of financial interest comes to an end when the person concerned gives it up, in contrast to a moral interest, which may, for example, remain after discontinuation of a professional activity.

The NACC should develop a specific policy to inform people concerned and monitor their actions of renunciation and be entitled to open prosecution against the offenders.

### Lebanese legal provisions

None

### Recommendations

A mechanism of automatic resignation under the control of the NACC should be acted in legal provisions to constitute a deterring threat for people who does not want to respect the prohibition of conflict of interest.

## RESIGNATION

Public officials should be required to remove the conflicting private interest if they wish to retain their public position and the conflict of interest cannot be resolved in any other way (for example by one or more of the measures suggested above).

Where a serious conflict of interest cannot be resolved in any other way, the public official should be required to resign from their official position.

The conflict of interest policy (together with the relevant employment law and/or employment contract provisions) should provide the possibility that their official position can be terminated in accordance with a defined procedure in such circumstances.

## D. DETERRING SANCTIONS

### PRACTICAL CASE(S)

- The amount of the fine remains very low compared with the benefit of the illicit enrichment given by the conflict of interest.

### BEST PRACTICES

As already presented above, there is not a common international trend between countries. The scope of potential sanctions is ranging from administrative or disciplinary measures against officials who did not comply with the conflict of interest regime, up to criminal penalties for violations of a law that regulates conflicts of interest.

However, in some countries, the violation of codes of ethics may entail sanctions, while in others, provisions of codes of ethics are of a purely aspirational character (i.e. Austria).

See UNCAC Article 26 - Liability of legal person and Article 30 - Prosecution, adjudication and sanctions



## CHAPTER 4 REMEDIAL MEASURES: DIRECT

### LEGAL FRAMEWORK

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#### Lebanese legal provisions

As seen above, the penal code provides a penalty ranging up to 2 years of jail and the draft law on corruption a sanction's threshold going up to 7 years.

**The article 14 of the new law 189/2020 states that whoever commits the crime of illicit enrichment is subject to imprisonment from 3 years to 7 years and a fine between 30x and 200x the official minimum wage. The money must be returned to the victims, if they exist. If they do not, they must be returned to the public treasury.**

**Article 15 of the same law states that the punishment is increased from 1/3rd to 1/2 on every employee who uses violence, coercion, threat, blackmail, use of influence, or abuse of power in order to influence the procedure related to his/her criminal proceedings.**

**Article 7 of this law states that the declaration is considered a condition for appointment/employment. An employee is considered laid off if he/she does not present the declaration in due time. All financial obligations, such as salaries and remunerations, are withheld in case of the absence of a declaration.**

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#### Recommendations

Conflict of interest should be considered as an act of corruption and, following the core principle of the UNCAC, has to be criminalized.

Additionally, to penal sanctions, civil ones (as confiscation of ill-gotten assets or payment of damages), disciplinary ones (as forced resignation), administrative ones (as cancellation of a procurement procedure or voted decision) or civic ones (as suspension of civil rights for elected people) should be fixed.



## CHAPTER 5

# REMEDIAL MEASURES: INDIRECT

### A. LINK WITH CORRUPTION

#### PRACTICAL CASE(S)

- Official receives gift on an offshore bank account abroad as a bribe.
- The wife of a politician is paid with jewels to thank her husband for a favourable decision.
- An expensive sports car is just put at disposal to a judge because he has closed a file.

#### BEST PRACTICES

The fact that conflict of interest supports act of corruption is evident and that is why it is included in the UNCAC. In addition to the above-mentioned article 7, we can add here the article 15 of the convention related to bribery of public officials<sup>14</sup>.

The link with corruption leads to two main consequences: first, if we consider CONFLICT OF INTEREST as a way of committing corruption it must be punished by penal law and be considered as a crime. Second, the Anti-Corruption authority if existing has to play a major role in controlling risks and could be entitled to cope with committed cases of CONFLICT OF INTEREST.

### LEGAL FRAMEWORK

#### Lebanese legal provisions

Law on Fighting Corruption in the Public Sector and the Establishment of a National Anti-corruption Commission (approved by Parliament on 21/04/2020).

Article 3:

**“A. Corruption offenses are also considered as the following acts:**

1. Obtaining or misappropriating obligations or obtaining licenses from one of the public rights persons to bring in the private benefit if any of them occurs contrary to the law.
2. The use of public funds, the means of the State and other persons of the public right, contrary to the law, to bring about a private benefit.
3. Buying or selling a person’s property transferred or not transferred based on obtaining information that is not available to the public or prior to the purchase or sale, its value is raised or decreased due to laws or regulations, the issue of issuance, or projects that are planned to be carried out, obtained by this person by virtue of his job or authority, or a link to his relative, his share or his service

**B. It is not required that the private benefit that arises from the corruption that is defined in paragraphs 7, 3 and 2 of Item (A) of this Article be obtained directly**

<sup>14</sup> United Nations Convention Against Corruption, UNODC, New-York, 2004

*or immediately. Rather, it can arise from benefiting from the projects.*

*C. Whoever commits any of the acts stipulated in this Article shall be punished with imprisonment from three months to three years and with a fine ranging between two and three times the value of the expected or realized material benefit.»*

*Article 6 of the law prevents conflict of interest in appointing members of NACC: “not to have, upon appointment and during the previous five years, held any political office or party position, and not currently or during the said period a member of any association that practices political work or a member of one of the parties”.*

*Article 12 prevents conflict of interest between the NACC and any other branch of government, by removing any discretionary power to curb the NACC’s powers.*

### Recommendations

We recommend that in the draft law about corruption specific provisions do mention conflict of interest as a form of corruption and punish it as severely as for acts of corruption and not only as a predicate offense of illicit enrichment.

## B. LINK WITH ILLICIT ENRICHMENT

### PRACTICAL CASE(S) \_\_\_\_\_

- Just to please the mayor who can have a favourable influence, a firm is making works for free in his villa.
- A policeman is systematically fed without paying by a restaurant which is afraid not to please him.

### BEST PRACTICES \_\_\_\_\_

As illicit enrichment is a consequence of corruption, it could also be a fortiori a consequence of conflict of interest.

According to Article 20 UNCAC regarding to illicit enrichment:

*“Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.”*

The advantage of considering this type of offense instead of a conflict of interest must be sought in terms of ease of proof (it is sometimes easier to prove illicit enrichment) and prescription period.

## CHAPTER 5

### REMEDIAL MEASURES: INDIRECT

Indeed, an individual who committed an offense resulting from a conflict of interest can perceive the benefits of its offense long after the facts. This benefit is considered as illicit enrichment. It is particularly relevant with revolving doors where the benefits (recruitment by the private firm) can occur up to 5 years after resignation from public responsibilities.

The starting point for the prescription period can then be postponed from the time of perpetration of the offense to the date of the recruitment.

This penal technique will implement in a way the Article 29 of UNCAC about statute of limitations:

*“Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offense established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.”*

## LEGAL FRAMEWORK

### Lebanese legal provisions

The new law 189/2020 is amending the Law No. 154/1999 on illicit enrichment, which evokes conflict of interest

**Article 4(6) of the draft law on conflict of interest** provides that the declarations must be submitted in compliance with the law of illicit enrichment. (OMSAR’s law indicates that they are submitted in a sealed and signed envelope)

### Law on Declaration of Patrimony and Interests and Punishing Illicit Enrichment (as amended by the Committee on Administration and Justice and thereafter the Sub-Committee derived from the Joint Committees)

Law 154 dated 27/12/1999 (as amended)

#### Part Three: the elements of the crime of illicit enrichment and methods of punishment and trials

**Article 10:** the definition of illicit enrichment was changed to: any large unjustified addition happening to the employee’s patrimony (whether in Lebanon or abroad) after employment, whether this employee is subject to the declaration or not. The non-justification part of the crime is considered an element of the crime of illicit enrichment.

#### Article 11: (similar to Article 9 of old law)

Illicit enrichment does not fall under “breach of duty” of civil servants and is subject to the jurisdiction of the normal judiciary (not administrative).

The law of penal procedure is applied in trials of illicit enrichment, in cases where it does not contradict with this law, in matters of investigative and interrogation procedures and the trials *in the Law of fighting corruption in the public sector and the establishment of the NACC.*

(same as Article 8 of old law) criminal prosecution is not precluded by prior permissions and permits listed in laws.

#### Article 12: (similar to Article 10 in old law)

Complaints by victims are FREE OF CHARGE when submitted to the NACC (after they cost 25 million LBP in old law).

If complaints are submitted directly to the pertinent jurisdiction, a guarantee of 3 million LBP is paid which is kept in case the complaint is rejected; otherwise, it is returned to its owner.

(similar to Article 13 in old law) Notwithstanding all other laws, and in case of suspecting the crime of illicit enrichment, both the investigative judge and the pertinent court can order the freezing of the assets of the suspect, and the placement of signs on his/her properties...

**Article 13: (amends Article 18 and 19 of old law)**

The crime of illicit enrichment is not subject to the statute of limitations (neither in the criminal courts nor in the civil courts).

**Section Four: Punishments**

**Article 14:**

Whoever commits illicit enrichment is punished by incarceration (3-7 years) and a fine equivalent to 30-200 times the official minimum wage. (It was amended to become a felony and not a misdemeanor)

**Article 15: (increasing sentence – this was not in old law)**

The punishment is increased by 1/3 to 1/2 if the public employee uses violence, coercion, threatening, intimidating or use of influence or exploiting authority to influence the measures related to trial.

**Recommendations**

This provision could also be amended in including conflict of interest as a source of illicit enrichment.

**C. LINK WITH MISUSE OF PUBLIC FUNDS OR EMBEZZLEMENT**

**PRACTICAL CASE(S)**

- A mayor pays with the budget of the municipality a road leading only to his house.

**BEST PRACTICES**

In many cases, a conflict of interest results in deeds of misuse of public funds and/or embezzlement.

Article 17 of the UNCAC related to embezzlement:

*“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position”*

**LEGAL FRAMEWORK**

**Lebanese legal provisions**

The Lebanese penal code (Legislative decree 340/1943) punishes crime involving misuse of public funds and embezzlement in its article 364.

**Recommendations**

None

## CHAPTER 5 REMEDIAL MEASURES: INDIRECT

### D. LINK WITH BAD MANAGEMENT OF PUBLIC BUDGET OR LAW MAKING

#### PRACTICAL CASE(S)

- A MP is voting for a law which gives authorization to polluting activities provided by a firm because he has some interests with that firm.
- A Minister gives orders to his staff to systematically accept files presented for authorization without any prior instruction to be sure that when some files where he has interests will arrive nobody will check nothing.

#### BEST PRACTICES

Both UNCAC (article 9) and European Union financial regulation stress on the cause-effect link between Conflict of interest and bad management public budget, or law making.

Financial regulation of the European Commission, article 57:

*“1. Financial actors and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring their own interests into conflict with those of the Union. Where such a risk exists, the person in question shall refrain from such action and shall refer the matter to the authorising officer by delegation who shall confirm in writing whether a conflict of interests exists. The person in question shall also inform his or her hierarchical superior. Where a conflict of interests is found to exist, the person in question shall cease all activities in the matter. The authorising officer by delegation shall personally take any further appropriate action.*”

*2. For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.*

*3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 setting out what is likely to constitute a conflict of interests together with the procedure to be followed in such cases.”*

- Rules of applications – Article 32
- Rules of procedure of the European Parliament

Commission decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission (2018/C 65/06):

Article 2 - Principles:

*“Members shall avoid any situation which may give rise to a conflict of interest or which may reasonably be perceived as such. A conflict of interest arises where a personal interest may influence the independent performance of their duties. Personal interests include, but are not limited to, any potential benefit or advantage to Members themselves, their spouses, partners or direct family members. A conflict of interest does not exist where a Member is only concerned as a member of the general public or of a broad class of persons.”*

## LEGAL FRAMEWORK

### Lebanese legal provisions

Article 20 of the Law about public accounting: *“Anyone who commits, by virtue of his executive authority or his position, fraud in estimating public expenditure, organizes or participates in organizing the draft fiscal budget on incorrect grounds, in order to mislead the competent authorities, and compels them to take measures, or to ratify expenses not justified by the current financial situation, shall be punished by a fine of no less than damage caused.”*

### Recommendations

The President of the Court of Accounts (CoA) could provide direction to the financial magistrates to investigate grounds of false estimations and to detect whether a conflict of interest is at the origin of the falsification.

## E. LINK WITH FRAUD IN PUBLIC PROCUREMENT AND PUBLIC-PRIVATE PARTNERSHIPS

### PRACTICAL CASE(S)

- A firm promises to a civil servant that he will be recruited in two years if he accepts its bid.
- Rather than processing through a transparent procurement act, an official in accordance with a firm write artificially complex and requiring specifications to oblige the administration to contract a PPP.

- A preselection process is voluntarily very selective to focus only on a firm as a possible bidder in exchange of some benefits.

### BEST PRACTICES

Conflict of interest can occur when the administration is contracting with a private partner. Here also, specific measures related to public procurement process have to be taken in order to reduce risks in these procedures and implement the principles established by the UNCAC. Article 9 of the Convention promotes transparency in free competition, in procurement decision making and transparency and accountability in the management of public finances.

The importance of measures to prevent conflict of interest in the private sector was underlined during the Conference of the State parties of UNCAC resolution 7/5, as well as in resolution 6/5, entitled “St. Petersburg statement on promoting public-private partnership in the prevention of and fight against corruption” stressing on the double responsibilities of actors of both public and private sectors.

## LEGAL FRAMEWORK

### Lebanese legal provisions

A reform of public procurement is underway.

### Recommendations

The draft law on Public Procurement should include provisions about conflict of interest both in procurement and public-private partnerships.



## CHAPTER 5

### REMEDIAL MEASURES: INDIRECT

#### F. LINK WITH MONEY LAUNDERING

##### PRACTICAL CASE(S) \_\_\_\_\_

- A mayor contracts with a firm for a fake delivery of services and pay this firm with an amount of public money corresponding to the amount of money to be laundered.

##### BEST PRACTICES \_\_\_\_\_

On the same grounds, the benefits from conflict of interest can be hidden through processes of money law during as it results an illicit enrichment.

If it can be difficult to prove CONFLICT OF INTEREST when happening, it is sometimes easier (for evidence and prescription reasons) to prove money laundering of the ill-gotten benefits.

##### LEGAL FRAMEWORK \_\_\_\_\_

###### Lebanese legal provisions

Law No. 310/2001 on money laundering and financing terrorism

Article 1(9): *“Illicit money refers to: (9): Corruption, including bribery, dismissal of power, embezzlement, job investing, abuse of power and illicit enrichment.”*

###### Recommendations

Following the recommendations of OECD and the World Bank, conflict of interest should be considered as a predicate offense for money laundering.

#### G. LINK WITH TRADING IN INFLUENCE AND ABUSE OF FUNCTIONS

##### PRACTICAL CASE(S) \_\_\_\_\_

- A private firm pays studies in an American expensive university to a young official in exchange of his future influence on decisions concerning the firm.
- A policeman receives money to practice a violent arrest against someone without any reason just to revenge the payer.
- An investigator entitled to phone tap for official reasons is spying her wife and her lover using for personal sake this investigating method out of any legal procedure.

##### BEST PRACTICES \_\_\_\_\_

Especially in cases of revolving doors, conflict of interest can occur in trading of influence of an official by a firm, which will later recruit him as the price of its misbehaviour.

Article 18 of the UNCAC is referring to trading in influence; and article 19 to abuse of functions.

##### LEGAL FRAMEWORK \_\_\_\_\_

###### Lebanese legal provisions

Lebanese penal code stipulates in its article 357 that *“Whoever takes or seeks undue payment or accepts the promise of it, whether for himself or for others with the intention of granting to others or seeking*

## CHAPTER 5 REMEDIAL MEASURES: INDIRECT

*to obtain for them a job, work, contracting, projects or other profits or grants from the state or one of the public administrations or with the intent to influence the conduct of the authorities in any way is punishable by imprisonment from two months to two years and a fine of at least twice the value of what was taken or promised for.”*

And in article 358: *“if the previous act was committed by a lawyer for the purpose of gaining the sympathy of a judge or referee the bankruptcy officer or an expert in any issue is punishable by jail for one year to 3 years and the prohibition from the practice of the profession for life”*

### Recommendations

None

## H. LINK WITH OBSTRUCTION OF THE COURSE OF JUSTICE

### PRACTICAL CASE(S)

- Judges receives some free vacations in a paradise destination to take a favourable decision.

### BEST PRACTICES

Considering that conflict of interest can strongly affect the exercise of a fair and independent justice, measures need to be taken in that respect.

UNCAC Article 11 of the related to measures relating to the judiciary and prosecution services and Article 25 related to obstruction of justice.

### LEGAL FRAMEWORK

#### Lebanese legal provisions

Lebanon has already a very interesting set of measures to guarantee both normal running of justice and strict conditions to ensure independence of actors of justice (civil, penal, and financial) listed below:

- Code of civil Procedure (Legislative decree No. 90/83) articles 120 and 121: measures to avoid risks of being on (legitimate) suspicion.

Regarding the various actors (judiciary magistrates, financial magistrates, lawyers, ombudsman), the legal framework presents various provisions:

- Article 20 of the Constitution: *“The judges shall be independent in the exercise of their functions. The decisions and judgments of all courts shall be rendered and executed in the name of the Lebanese people.”*
- Legislative Decree No.150/1983 on the Organisation of the Judiciary: articles 47, 51 and 62. NOTE: The entire process of appointing judges is restricted to the Supreme Judicial Council; most member judges of this Council are appointed by Ministerial Decrees (Article 2 of this Legislative Decree).
- Law n°8/70 organising the Profession of Lawyers: article 94(1)

## CHAPTER 5

### REMEDIAL MEASURES: INDIRECT

- Law of organisation of the Court of Accounts (legislative decree n°118/1959): article 8
- Law 664/2005 on Ombudsman

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#### Recommendations

Specific provision could be adopted to consider that obstruction to the course of the NACC attributions should be criminalised (i.e. as an amendment of article 15 of the new law 189/2020).



## CHAPTER 6

# INSTITUTIONAL FRAMEWORK

### A. WHICH INSTITUTIONAL FRAMEWORK?

One important aspect of conflict of interest management regimes is the scope of the categories of public officials that are covered by the conflict of interest legislation.

- First, politically appointed public officials and high-level civil servants
- Second, public officials employed in the administration of the executive, legislative and judicial branches of power;
- Third, public officials with functions considered vulnerable to corruption, such as officials, engaged in procurement, customs, law enforcement or the judiciary.

The institutional framework can be chosen between 3 models:

- Centralized model: Conflict of interest commissions
- Decentralized model: mainstreaming of ethics management
- Double system: centralized for officials and declaration of interests as well as investigations and decentralized for preventive measures and regarding all the public agents no matter their position

The management of conflicts of interest was often seen as part of the prevention of corruption, which led to a decision to entrust an anti-corruption body with conflict of interest management functions. This was most often the case in countries where specific anti-corruption and conflict of interest laws had been adopted.

Thus, in many countries (centralized model) anti-corruption authorities are considered as the best one to also deal with cases of conflict of interest.

It will also depend of the existence (or not) of a mandatory declaration of interests. And in many situations, this authority in charge of collecting and controlling declaration of interests is also the one in charge of declarations of assets.

Even if States have demonstrated a variety of approaches as regards the type of information requested from public officials and the methods used to monitor and assess the information provided, key emerging themes include the prevalence of central, independent authorities charged with monitoring the implementation of assets declaration requirements and the increasing use of information technology tools to carry out these tasks.

Article 36 UNCAC about specialized authorities enacts that:

*“Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks”.*

## B. ROLE OF A SPECIFIC AUTHORITY

### Lebanese legal provisions

The NACC will be the Authority.

**Article 7(2) of the draft law** omitted part 2 of this article (which was present in OMSAR's law) which stated that: *"The Council shall be informed of the Commission's decision and the measure it includes, and it shall be referred to the competent authority to act accordingly."*

### Recommendations

The NACC in charge of collecting declaration of interest should be entitled to carry out specific investigations by being seized by oversight bodies or directly by citizens.

## Central Inspection

### Lebanese legal provisions

The Central Inspection is entitled to perform auditing investigations as well as to treat complaint.

### Recommendations

Central Inspection should collect all incidental cases transmitted by each minister as well as denunciations given by whistle blowers. In its annual report as well as in its annual programming the inspection could stress on these specific issues to be detected and investigated.

CIB should refer systematically to the NACC when discovering cases of conflict of interest.

## C. ROLE OF OVERSIGHT BODIES

Considering the generalization of the forensic audit and the monopoly de facto given to oversight bodies to be the single institutions able to detect complex or very well dissimulated cases of conflict of interests, the NACC should act in full cooperation with these institutions of control as well with the Financial Intelligence Unit (SIC).

## Court of Accounts

### Lebanese legal provisions

The Court of Account is entitled to carry out various types of control (among them a priori controls on important public contracts) and audits.

### Recommendations

Promoting forensic audit, which is necessary to fight corruption and constitutes an implementation of the international standards pushed forward by INTOSAI, will

## CHAPTER 6 INSTITUTIONAL FRAMEWORK

notably be implemented by strengthening controls of cases of conflict of interest.

Regarding specific zones of risks such as procurement, public private partnerships, public contracts, recruitment, grants, authorizations, the CoA could also focus on investigating conflict of interest cases. The strengthening of actions implemented by the conflict of and the COA in fighting corruption (including conflict of interest) will need to be supported in this way by collecting public information/ denunciations.

CoA should refer systematically to the NACC when discovering cases of conflict of interest.

Then, once the NACC will be set up, a specific hotline to collect testimony and complaints as well as annual report on cases denounced should be made.





## CHAPTER 7

# LEGAL FRAMEWORK

### A. WHICH LEGAL FRAMEWORK TO ADOPT?

According to UNDOC<sup>15</sup>, the legal framework should be built around

- Specialized legislation: laws on conflict of interest, anti-corruption laws and regulations
- General legislation: laws on public administration and the civil service, internal instructions, disciplinary rules
- Codes of conduct
- Combined approach

According to the Conference of the State parties of UNCAC, the proper prevention and regulation of conflicts of interest in the public administration is only possible following the adoption of clear, known, written standards.

In this regard, many States outlined how written standards in the form of primary and secondary legislation and codes of conduct were employed to regulate and provide guidance to officials as to the types of activities from which they should refrain in order to avoid conflicts of interest. A number of States also emphasized how legislative measures focused on conflicts of interest and other practices targeted at “high-risk” sectors, such as public procurement, had sought to reduce the likelihood of conflicts of interest in those sectors. The measures, policies and practices adopted by States to address the issue of conflicts of interest reflects the comprehensive approach to the prevention of corruption required by chapter II of the Convention.

Most countries stress on the importance of adopting a holistic approach to address effectively the issue of conflicts of interest throughout the public service.

In the European Union, member States present a various combination of legal frameworks depending of their juridical culture<sup>16</sup>.

#### An efficient legal approach could follow these steps:

- Define in concrete terms what constitutes the private interests of public officials;
- Establish mechanisms for the disclosure of those private interests;
- Set clear guidelines ex ante as to which forms of private interests are incompatible with decision-making in the public interest and to establish procedures for excluding such private interests from the decision-making process;
- Define ex post procedures and sanctions for resolving accusations of conflict of interest;
- Establish an office responsible for monitoring implementation of the legislation.

#### Technically, conflict of interest issues can be regulated in many ways:

- Conflict of interest procedures may be mandated in separate ethics codes, dedicated conflict of interest laws, or encompassed in existing civil service codes or penal codes.
- Conflict of interest regulations usually must be drafted in conformity with the criminal and criminal procedures codes, so that violations can be punished not only with administrative and civil sanctions but also with criminal penalties.

<sup>15</sup> Minutes of the 9th intersessional meeting of the open-ended intergovernmental working group on prevention against corruption, Vienna, 5-7 September 2018

<sup>16</sup> For more details : <http://www.aalep.eu/conflict-interest-laws-eu-member-states>

**This legal approach can also consider other types of legislation to support conflict of interest regulation:**

- A comprehensive system of conflict of interest monitors not just the behaviour of public officials, but also the behaviour of firms and individuals who might wish to influence the design of public policy.
- Laws governing political party and campaign financing regulate the sources of income of parties and require them to disclose these sources, in an attempt to ensure that wealthy constituencies do not have undue influence over the decisions of politicians or officials.
- In some countries (i.e. in France), firms and individuals that lobby the government or legislature are required to register with the State administration and disclose the purpose of their contacts with public officials.

A common element of all of these systems is that they require the disclosure of information. While this information is used by the State to monitor and address conflict of interest, the systems work most effectively when the information is made available to the public as well. Civil society organizations and the media play an important role in investigating and publicizing important cases of conflicts of interest, so that higher public pressure is put on the State to remedy these problems.

For this reason, these systems rely heavily on laws protecting the right of the public to State information (that it's recently the case for Lebanon), which provide procedures for the public to access information that has been disclosed.

**In the current situation, OMSAR and the technical committee could present two types of texts:**

- a) An implementation decree to be adopted promptly as a first strong answer to the citizens demands.
- b) Draft legislative measures that could be either a specific draft law on conflict of interest or only amendments to the Draft Law on Fighting Corruption in the Public Sector and the Establishment of a National Anti-corruption Commission.

## **B. DRAFTING AN IMPLEMENTING DECREE**

**The decree should present:**

- Mandatory actions to be taken in each ministry to strengthen awareness on conflict of interest
- Actions will define all cases where risks of direct or indirect conflict of interest can arise
- Such a policy will include: general guidelines valid for every civil servant, specific guidelines implementable for each peculiar ministry considering its own risks
- For such measures a prior risks assessment could be carried out by ministry to properly map its specific risks

## CHAPTER 7 LEGAL FRAMEWORK

### It should answer the following questions:

- In case of declared or established conflict of interest, which sanctions would be enforced (disciplinary/penal/confiscation)?
- What would be the procedures in front of the Minister? The CIB? The COA? The penal prosecutor?
- What would be the guarantees given in implementation of the rights of defence?
- How to set up recusal procedures?
- How to set up renunciation procedures?
- What could be the constraints in case of revolving doors considering delays (5 years after?), field and geographical restrictions?

As already presented above, there is not a common international trend between countries. The scope of potential sanctions is ranging from administrative or disciplinary measures against officials who did not comply with the conflict of interest regime, up to criminal penalties for violations of a law that regulates conflicts of interest.

### C. DRAFTING A SPECIFIC LAW OR AMEND EXISTING LAWS?

The priority is to link legally speaking Conflict of interest with corruption.

#### Considering the current legal framework where:

- Article 364 of the penal code already represses conflict of interest during appointment
- Law No. 154/1999 already represses illicit enrichment
- Law No. 310/2001 already represses money laundering that could be the result of conflict of interest gains
- Legislative Decree No. 112/1959 (Civil Servants Charter) already prohibits revolving doors linked with conflict of interest

A *minima* the only new measure needed could be to impose a declaration of interests. This can be done through an amendment to the Law on Fighting Corruption in the Public Sector and the Establishment of the National Anti-Corruption Commission (NACC) and to give both the responsibility of declarations of interest and assets to the NACC.

While laws and codes, as primary sources, can establish definitions, principles and essential procedural requirements of a conflict of interest policy; guidelines, training materials, advice and counselling should also be used to provide practical examples and concrete steps to be taken for identifying and resolving conflict of interest situations. The efforts should be emphasized in rapidly changing or “grey” areas such as procurement, private-sector sponsorship, public-private partnerships, interchange of personnel between sectors, NGO relations, and party-political activity by individuals.

**The current answer of Lebanon was to adopt the new law 189/2020 which impose and control declaration of interest under the scrutiny of the NACC.**

**In order to set up an efficient State strategy against corruption and moreover financial crimes of any sort, following the recommendations of OECD, the State of Lebanon could give to the NACC a wider scope of its action, under the supervision of penal prosecutors when investigating, to develop a general Lebanese strategy including fighting of conflict of interest, illicit enrichment, money laundering, tax crimes, procurement offenses within compliance, investigation and remedial approaches and under the frame of a cooperation of other agencies (FIU, tax crime department of the Ministry of Finance...).**

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