



Republic of Macedonia

**STATE COMMISSION
FOR PREVENTION OF CORRUPTION**

**GUIDELINE FOR MANAGING
CONFLICT OF INTERESTS**

Skopje, September 2008



HUMAN AND INSTITUTIONAL
DEVELOPMENT PROJECT

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This Guideline is designed as a practical tool for providing officials and the general public with assistance and support in resolving their dilemmas as to whether or not a certain activity is a conflict between the public and private interest.

Conflict of interest should always be resolved in favor of the public interest. This will be dependent on an operational system of guidelines to help identify both apparent and potential conflicts and provide a method for resolution in favor of the public interest.

Development of this Guideline was planned in the Action Plan within the State Program for Prevention of Conflict of interests, adopted by the SCPC in May 2008.

This Guide and the State Program incorporate the international standards and recommendations of the OECD.

There is a recognized relationship between corruption and conflict of interest. Corruption is the use of public office for private gain. Conflict of interest is the performance of public duties where the public official has a personal interest that is, or appears to be in conflict with their official duty. Corruption may often include cases of conflict of interest, but not all cases of conflict of interest are cases of corruption.

The Organization for Economic Cooperation and Development (OECD) has developed guidelines which ensure:

1. The public interest must come first.
2. Transparency of decision making is paramount. This means supporting objective scrutiny by putting in place a system of declaration of interests and conflicts.
3. Lead by individual responsibility and personal example.
4. To establish an organizational culture that does not tolerate conflict of interests

The OECD defines conflict as interests as follows:

Conflict of interest involves a conflict between the public duty and the private interest of a public official, in which a public official's private-capacity interest could improperly influence the performance of their official duties and responsibilities.

The public officials while performing his/her public duties must always act in favor of the public interest, completely excluding the his/her private interest, respecting the principles of the legislation, efficiency, confidentiality, independency, individuality, honesty and professionalism.

1. TERMS AND DEFINITIONS

According to Macedonian legislation, conflict of interest is defined as:

1.1. What is a conflict of interests?

“**Conflict of interest**” means a situation where the private interest of an official person is contrary to the public interest or when private interests influence or may influence his/her impartiality in conducting the duties of public interest”.

This means a conflict between a public official’s duties and responsibilities in serving the public interest, and the public officials personal and private interests.

1.2. What is a public interest?

“**Public interest**” is the wider general interest for the general wellbeing and advancement of all the citizens under equal conditions in a material and immaterial sense which may be endangered by causing damages of material and immaterial nature arising from conflicts between private and public interest.

This means carrying out official duties for the benefit of the public served by the Government, in a fair and unbiased way, and making decisions that are not affected by self interest, private relationships or the likelihood of gain and loss.

1.3. What is a private interest?

“**Private interest**” is a material and an immaterial interest of an Official that may influence his/her decision-making while discharging

duties of public interest;

This means private interests which can bring advantages to the public official in his personal capacity, or to others he may wish to benefit or cause disadvantage. Private interest does not solely mean financial interest either to make a profit or avoid a loss, but includes non material benefits that can include social and professional activities or interests.

2. MAIN PRINCIPLES OF THE PREVENTION AND REDUCTION OF CONFLICT OF INTEREST

In performing their official duties and responsibilities, a public official should follow this list of main principles for prevention of the conflict of interests.

2.1. Serving the public interest

This means that every public official while performing his/her public duty should act upon the following:

1. To make decisions exclusively aimed at the realization of the public interest, based on the legal and other regulations;
2. Not be motivated by any ethnic, religious, political party or political, family or other personal interests;
3. Public officials should not be involved in decision making in which they have or appear to have a personal interest. If the public official discovers a conflict of interest that was not immediately apparent before they became involved in the decision, they should notify their interest to their superiors, and withdraw from any further involvement in the decision.
4. Not accept or obtain any benefit which is a result of the undertaking or failure to undertake certain obligation or duty;

5. Public officials must not accept any personal benefit for performing or not performing their official duties. Public officials must not misuse official information which they receive in the course of their public duties. This means that public officials must not take advantage of, or personally profit from official information. Equally they must not use official information to avoid a personal loss or disadvantage.

2.2. Transparency and supervision

The public official should act upon the following:

1. Perform their duties, arising from the function he/she holds, publicly and transparently.
2. Facilitate the access of the citizens to the information he/she is entitled to.
3. The public should be able to know what the public officials' personal interests are.

2.3. Promotion of individual responsibility and leading by personal example

The public official should:

- exercise and represent personal integrity;
- serve as a personal example for other officials and the public;
- By accepting their function, have greater expectations of his/her behavior both in the public and private life;
- in case of conflict of interest, to bear personal responsibility for its detection and resolution;
- demonstrate professionalism and application of the envisaged policies and practices.

2.4. Developing an organizational culture of intolerance towards conflict of interest

- to initiate and lead an open dialogue and discussion which triggers proposed measures for the reduction and prevention of the conflict of interests;
- to introduce guidelines;
- to organize training and to apply the training in the working environment.

3. WHAT IS AN OFFICIAL?

Macedonian legislation does not give a clear, unified definition of public officials and there is no complete list of public officials.

According to the Law on Prevention of Conflict of Interest an Official is the President of the Republic of Macedonia, appointed Ambassadors and envoys of the Republic of Macedonia abroad and nominated persons by the President of the Republic of Macedonia; elected or appointed functionary in the Assembly of the Republic of Macedonia, the Government of the Republic of Macedonia, the authorities of the state administration, courts and other authorities and organisations performing certain expert, administrative and other duties within the framework of rights and obligations of the Republic of Macedonia, the municipalities and the City of Skopje, as well as other persons discharging public authorisations.

At central level this would include, for example: Parliamentarians; Ministers, Directors of state independent bodies, Ombudsman; Judges in the Constitutional court; Presidents of the steering committee in EVN or Macedonian posts, Deans at State Universities, etc.

At municipal level this would include: Mayors, Members of the Council, Managers of Public Enterprises, director of public enterprises dealing with communal issues, director of enterprise dealing with public roads, etc.

An internationally accepted definition and one which Macedonia has officially accepted is contained within the UN Convention against Corruption and reads as follows under Article 2a:

(a) “Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party.

4. RISK AREAS FOR CONFLICT OF INTERESTS

The following risk areas for conflict of interest have been identified by the SCPC when creating the State Program for Prevention of Conflict of Interests.

4.1. Accumulation of functions and obtaining benefits

Accumulation of functions in practice means holding of multiple public positions.

During the course of his/her mandate, the official may not perform any other function, duty or activity that is incompatible with his/her function. That mean, may not perform any other activity related to making a profit.

An official may perform other works and activities only with an approval previously granted by the functionary managing the body.

An Official who is a member in the bodies of management of a trade company shall during the period of discharge of the official, or more precisely public duties, transfer his/her rights in the company to another person.

An Official may be a member board of management or supervision of non-profit organisations, citizens associations and other legal entities performing scientific, cultural, sports, humanitarian and other similar activities, but without right of compensation, apart from travel expenses related to the activities of such organisations, association and legal entities. In that case, the Official is obligated to notify the State Commission within a period of 30 days.

4. 2. Influence for financial or other benefits

An official may not use his/her position to make influence on other person in a state body, public enterprise, public institution or other legal entity to adopt or not to adopt certain decision, to do something, to omit or to endure something in order to gain benefit advantage or benefit for him/herself or for other person.

An official may not participate as a mediator or representative in commercial or other deals between legal entities and citizens.

There are number of material and procedural laws which contain provisions for exemption (e.g. Law on Public Procurement, Law on Local Self-Government, Law on Public Enterprises, Law on MPs, Law on General Administrative Procedure)

Public official should withdraw from making a decision in which he or she has a personal interest.

4. 3. Discretionary powers

There is no definition of what discretionary powers are in the Macedonian legislation.

Discretion means the freedom to decide what should be done in a particular official decision. The widespread use of discretionary powers creates a high risk of conflict of interest.

It is inevitable that a public official will often use discretion in the course of their official duties. But this means that a public official must take particular care to exercise his or her duties in accordance with the principles for prevention and repression of conflict of interest.

The public official must always act and decide in the public interest based on the legal regulations.

4. 4. Officials taking decisions, when they have private interests.

Officials should not take decisions when they have a personal interest. The purpose of this Guide is to help public officials identify and avoid these situations.

Establishing system of declaration of interests that is recommended internationally is planned as an activity in the State Program for Prevention and Repression of Conflict of Interest.

Public official should withdraw from making a decision in which he or she has a personal interest.

4. 5. Gifts

A gift is defined as money, securities, regardless of the amount, as well as gold and other precious items, objects, rights and services which are given to the official without compensation and which put the official in subordinate or dependant position upon the party offering the gift.

An official may not receive gifts or any promise of a gift, except appropriate gifts such as books, souvenirs and similar goods whose value is determined by law, what mean that he/she may not to accept gifts whose value exceeds 100 euros in denar counter value.

An official who has been offered a gift or any other benefit related to the discharge of official duty, is obligated to reject such an offer, to determine the identity of the offering party, and if it is a gift that cannot be returned and without delay to report it to the competent authority, to indicate the witnesses and other evidence, and within 48 hours at the latest, to submit a written report of the event to the competent authority that had elected or appointed him/her.

Public officials should be aware that the receipt of gifts can create a strong risk of conflict of interest, furthermore that in some circumstances the receipt of gifts may be regarded as a corrupt act.

Therefore it is advised that public officials should not receive gifts in relation to their public duties.

4. 6. Nepotism

There is no definition of nepotism in the Macedonian legislation.

Nepotism means that a public official gives preferential treatment to an individual or group with equal claim to the same treatment based on a family relationship, friendship or other social “obligation”.

This behavior can be called cronyism when political patronage occurs.

However, an official may not exert any influence for employment or promotion of a member of his/her family over the body in which he/she is elected or appointed.

He/she has an obligation to inform the State Commission about every election, appointment, employment or promotion of member of his/her family in a state body, body of local self-government, public enterprise or other legal entity handling state capital within ten days after such election, appointment, promotion or employment occurred.

An official who participates or decides upon an employment procedure or is involved as a member of the body implementing such a procedure shall notify the manager of the institution where he/she is appointed on all employment procedures that may cause conflicts of interest.

After determining the relationship between the official and the candidate for employment, the manager of the institution is obliged to undertake all necessary measures to prevent conflicts of interest from occurring.

It is recommended that a public official withdraws from making a decision in which he or she has a personal interest.

An official may not exert influence over the body or legal entity which decides upon offers received on public announcement, tender or auction on public procurement, or any other procurements and activities. If among the bidders to a public tender announced by any body, public enterprise, public institution or any other legal entity disposing with state capital is a legal entity founded by an official or by member of his/her family, or in which the responsible person is a member of his/her family, the official has an obligation to inform the State Commission

for its participation in the tender within a period of ten days.

That rule shall also apply when on the basis of public announcement, tender or auction it shall be decided on issuing approvals, concessions, contingents or permissions for performing business or any other profitable activity.

4.7. Misuse of public assets/resources for private (personal, political party and other) interests

Using public resources for private and political goals or giving them to be used by other persons is prohibited.

It is evident that public property (official premises, means of communications, and official cars) has been used for election purposes.

State property is not to be used for private or political benefit.

4.8. Post-employment

This risk area is related to the risk of conflict of interest by public officials who leave office and take up private employment. This practice has particular risks for influencing the official's activities whilst still employed by the state.

A common example may be the situation when a public official makes an official decision which is influenced by a specific prospect of employment after he or she has left their official duties.

An official, who within three years from the date of termination of his/her function i.e. official duty, shall found a commercial company or shall engage in a profitable activity in the same field in which he/

she has worked, has an obligation within 30 days to inform the State Commission thereof.

An Official after ceasing the discharge of official duty may not within a period of at least one year manage or conduct audits in the legal entity in which a year before leaving his/her regular post his/her duties were directly related to supervision and control.

An Official after ceasing the discharge of official duty may not enter for a period of at least a year into contractual relations or business co-operation with a legal entity in which he/she had previously been employed.

An Official after ceasing the discharge of official duty may not at least two years after ceasing discharge of official duty, represent a natural person or a legal entity from the authority of prior employment if he/she had participated in the adoption of decisions on the specific subject.

An Official after ceasing the discharge of official duty may not during the term of his/her mandate or official duty as well as within three years after its termination, acquire on any ground and in any manner rights on stocks in the legal entity over which, he/she or the body in which he/she works or has worked conducts or has conducted supervision, except when such rights have been acquired by means of inheritance.

4. 9. Use and mistreatment of information obtained in public office, not available to the public

An official is obliged to treat the information he/she encounter throughout the performing of his/her function with utmost due confidentiality and to provide adequate protection of this information. An official is also obliged to act in this way after they leave office.

An official may not use any information that are at his/her disposal in order to gain benefit for him/herself or for any other person. This obligation lasts within three years after the date of termination of the function i.e. official duty, unless otherwise determined by law.

An official may not keep confidential data which according to this Law or any other law has to be published, nor request access to information for which he/she knows is not authorized to obtain, or act non-diligently towards keeping data which are considered as secrecy.

An official who is a member of a citizens association must not abuse the information and the data at his/her disposal while discharging his/her duties, nor gain advantage for him/herself and must not be a member of the managerial boards nor hold any managerial function in the association.

5. RECOGNIZING CONFLICT OF INTERESTS

The following persons and institutions have responsibility for identifying conflict of interest;

- Officials themselves,
- the State Commission for Prevention of Corruption,
- the Parliament of the Republic of Macedonia,
- the Government of the Republic of Macedonia,
- the ministries,
- the local self-government units,
- the courts,
- the Public Prosecution Office,
- State Audit office
- other bodies and organizations,
- other persons performing public authorizations,
- the NGO sector and
- the media.

6. METHODS OF OVERCOMING CONFLICT OF INTEREST

Best practices have been established internationally, in particular by the. This involves a multilayered approach. This will include legislative reform, and the development of internal institutional procedures; Methods of overcoming conflict of interest are:

1. Identifying risk areas for conflict of interest;
2. Procedures for ensuring transparency and supervision, which will include such basic measures as declarations of interests. Although at present in Macedonia there is no obligation for declaring private interest, such a system would be beneficial in the future, and the creation of a comprehensive declaration of interests is planned in the State Program;
3. Checklists of questions for a public official to answer;
4. Development of a sustainable resource for advice and guidance on conflict of interest.

It is essential to provide trainings to assist public authorities in identification and countering of conflict of interest.

Trainings, as part of the planned activities within the Action Plan of the State Program for Prevention of Conflict of Interest will be conducted by the State Commission in cooperation with other competent institutions.

These measures will help establish the objective of creating a culture of intolerance to conflict of interest.

7. STATE COMMISSION ON PREVENTION OF CORRUPTION

7.1. Competences

The State Commission has the following competences:

- to create and adopt a State Program with an Action Plan on Prevention and Repression of Conflicts of Interest
- to provide professional input into draft laws important for prevention of corruption and conflict of interest, and to cooperate with other institutions in the repression of corruption and conflict of interest
- to review cases of conflict of interest, and to suggest a structured system of reprimands for public officials found in conflict of interest.
- to report to the Parliament of Republic of Macedonia on its work, and also to report to the Government and the mass media.
- to conduct education of public officials for identifying conflict of interest and informs the public about the cases of conflict of interest
- to raise initiatives before state institutions for the dismissal, assignment, removal, criminal prosecution or implementation of other measures of accountability for public officials
- to maintain records of the property situation and oversee the changes in the property situation of elected or appointed officials.

7.2. PROCEDURE BEFORE THE STATE COMMISSION:

The State Commission shall instigate and implement a procedure for determining the existence of a conflict of interest on the basis of the principles of lawfulness, confidentiality, objectivity, impartiality and nonalignment

The State Commission shall instigate a procedure on the following basis:

- on its own findings;
- at the request of an Official Person;
- based on a report by another person;

- based on an anonymous report;
- as well as at the request of the authority in which an Official is employed.

Pertaining to the instigation of the procedure, the State Commission shall notify the Official and shall request a Statement on the allegations in the report.

The State Commission:

- may independently examine the allegations of existence of conflict of interests or request the examination to be conducted by other authorities for determining the existence of conflicts of interest.
- shall familiarise the public about the final data, protecting the personal data of the Official . The data which does not constitute a violation of the provisions of this Law may not be disclosed to the public without the consent of the Official it concerns.
- is obliged to request from the Official data about his/her property situation or the property situations of the members of his family or persons in close affiliation with him/her, about the changes in the property situation, about the business activities carried out by him/her or member of his/her family, the revenues gained by him/her and other data of significance to the application of this Law.
- may request from the Official to eliminate the consequences caused by the conflict of interest within 15 days of the day of identifying of existence of conflict of interest. If the Official eliminates the consequences, the State Commission shall cease the procedure and shall notify the party that had submitted the report within 15 days of cessation of the procedure.

7.3. TYPES OF MEASURES

The Official shall be pronounced with one of the following measures:

- warning,
- public warning,
- recommendation for dismissal.

The measures 2 (public warning) and 3 (recommendation for dismissal)

shall be published in the public information media.

The measure: **1 (warning)** shall be pronounced to the Official if violation of the provisions of the Law on Prevention of Conflict of Interests is determined, but such violation did not influence significantly the discharge of official duties by the Official.

The measure **2 (public warning)** shall be pronounced to the Official if it is determined that he/she had acted contrary to the provisions of the Law on Prevention of Conflict of Interests or other laws leading to significant disturbances in the discharge of official duties by the Official.

The measure **3 (recommendation for dismissal)** shall be pronounced of the Official if one of the measures (1) and (2) had been previously pronounced.

The determined measures shall be pronounced by the authority in which the Official Person is employed within 30 days from completion of the procedure for determining the existence of conflicts of interest by the State Commission, which is obligated to notify the State Commission, within 15 days of the day of adoption of the decision.

If the authority in which the Official is employed does not proceed as is determine before, the State Commission shall instigate an initiative to commence a procedure before a competent court with a view to determining liability against the responsible person in the competent authority or responsible person in the legal entity.

The Official may instigate a procedure before a competent court against the decision for pronouncing one of the measures to the Official.

The Competent Court is obliged to make a decision within 3 months from the day the procedure has been instigated.

In the State Program it is anticipated strengthening of the authorities of the SCPC in the part of pronouncing measures.

8. TYPES OF LIABILITIES

- **Public accountability**

In fact this is accountability of the Official related to his public duty, the acts he/she takes and for decisions he/she makes. In this respect, it is the strongest link between political accountability and possible conflict of interests. It is responsibility of the civil sector and media to hold public officials accountable for their public action.

- **Misdemeanor liability**

The official in state authority and authority of the units of local self government shall be responsible if he/she had committed the misdemeanor in the framework of his/her official competences or if he/she had exceeded the official competences. Depending on the nature of the misdemeanor and in accordance with the regulations envisaged in the Law on Misdemeanor the official can be a subject to the following misdemeanor sanctions:

- fine
- reprimand
- ban on practicing profession, performing activity and executing duty

- **Criminal liability**

An official bears criminal liability for if while performing official duties he/she violates the Law on conflict of Interest out of negligence. Criminal liability depends on the consequences that can occur from the determined conflict of interest – gained benefit or caused damage. The Criminal liability consist of pronouncing imprisonment starting from 3 months as the lowest measure and up to 10 years when there is property benefit or the caused damaged is of significant range.

9. USEFUL TOOLS

There is a list of most often questions, as a good starting position when there is a dilemma or uncertainty for possible conflict of interest. To identify the possible conflict of interest by your own, frankly answer the following questions:

1. Do I have personal or private interest that may hamper exercising of the public duty?
2. Could there be benefit for me now, or in the future, that could cast doubt on my objectivity?
3. How will my involvement in the action or decision be viewed by others?
4. Are there risks associated for me/my institution?
5. Do I have personal and private interest that can influence in the making of the concrete decision?
6. Does my involvement in the decision appear fair and reasonable in all the circumstances?
7. Do I stand to gain or lose from proposed action/decision?
8. What could be the consequences if I ignore a conflict of interest? What if my involvement was treated publicly?
9. Have I made any promises or commitments in relation to the matter?

If after that self-consultation, uncertainty still exists, please feel free to contact the SCPC.

In any case, is very important to take in consideration the respective legislation and **this Guideline, too.**

For any further and additional information and enquiries visit:
www.dksk.org.mk

LAWS AND OTHER REGULATION RELATED TO CONFLICT OF INTERESTS

The key legislation applicable to conflict of interest includes:

1. Law on Prevention of Conflict of Interests (“Official Gazette of the Republic of Macedonia”, no.70/2007)
2. Law on Prevention of Corruption (“Official Gazette of the Republic of Macedonia”, no. 28/2002, 46/2004, 126/2006 and 10/2008)
3. Criminal code (“Official Gazette of the Republic of Macedonia”, no.37/1996, 80/1999, 4/2002,43/2003, 81/2005, 60/2006, 19/2004,73/2006 и 7/2008)
4. Law on local self-government (“Official Gazette of the Republic of Macedonia”, no. 5/2002)
5. Law on public procurement (“Official Gazette of the Republic of Macedonia”, no. 136/2007)
6. Electoral code (“Official Gazette of the Republic of Macedonia”, no.40/2006)
7. Law on lobbying (“Official Gazette of the Republic of Macedonia”, no.106/2008)
8. Ethical code on appointed and elected officials in the local self-government units

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