

Global Forum on Fighting Corruption

Safeguarding Integrity Among Justice and Security Officials

February 24-26, 1999, Washington, D.C.

ETHICS RESOURCE MATERIALS

Codes, Statutes and Financial Disclosure Forms

Compiled by the U.S. Office of Government Ethics and the U.S. Department of State, in cooperation with the National Democratic Institute (NDI), American Bar Association Central and Eastern European Law Initiative (ABA/CEELI), Casals and Associates and the governments of Argentina, Canada, Germany, Nepal, the Philippines, South Africa and the United Kingdom. Crown copyright is reproduced with the permission of the Controller of Her Majesty's Stationery Office and the Cabinet Office.

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TAB A



Presidencia de la Nación Argentina
Oficina Nacional de Etica Pública

CODIGO DE ETICA
DE LA FUNCION PUBLICA

OFICINA NACIONAL DE ETICA PUBLICA

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PARTE GENERAL

CAPITULO I

FIN DE LA FUNCION PUBLICA

ARTICULO 1°.- BIEN COMUN. El fin de la función pública es el bien común, ordenado por las disposiciones de la Constitución Nacional, los tratados internacionales ratificados por la Nación y las normas destinadas a su regulación. El funcionario público tiene el deber primario de lealtad con su país a través de las instituciones democráticas de gobierno, con prioridad a sus vinculaciones con personas, partidos políticos o instituciones de cualquier naturaleza.

CAPITULO II

DEFINICIONES Y ALCANCES

ARTICULO 2°.- FUNCION PUBLICA. A los efectos del presente Código, se entiende por "función pública" toda actividad temporal o permanente, remunerada u honoraria, realizada por una persona humana en nombre del Estado o al servicio del Estado o de sus entidades, en cualquiera de sus niveles jerárquicos.

ARTICULO 3°.- FUNCIONARIO PUBLICO. A los efectos del presente Código, se entiende por "funcionario público" cualquier funcionario o empleado del Estado o de sus entidades, incluidos los que han sido seleccionados, designados o electos para desempeñar actividades o funciones en nombre del Estado o al servicio del Estado, en todos sus niveles jerárquicos. A tales efectos, los términos



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“funcionario”, “servidor”, “agente”, “oficial” o “empleado” se consideran sinónimos.

ARTICULO 4°.- AMBITO DE APLICACION. Este Código rige para los funcionarios públicos de todos los organismos de la Administración Pública Nacional, centralizada y descentralizada en cualquiera de sus formas, entidades autárquicas, empresas y sociedades del Estado y sociedades con participación estatal mayoritaria, sociedades de economía mixta, Fuerzas Armadas y de Seguridad, instituciones de la seguridad social del sector público, bancos y entidades financieras oficiales y de todo otro ente en que el Estado Nacional o sus entes descentralizados tengan participación total o mayoritaria de capital o en la formación de las decisiones societarias, así como también de las comisiones nacionales y los entes de regulación de servicios públicos.

ARTICULO 5°.- INTERPRETACION. La Oficina Nacional de Ética Pública es el órgano facultado para dictar las normas interpretativas y aclaratorias del presente Código. Los dictámenes e instrucciones escritas emitidos por la Oficina Nacional de Ética Pública son obligatorios para quienes los hubieran requerido o fueran sus destinatarios.

El funcionario que ajuste su conducta a tales dictámenes o instrucciones queda exento de responsabilidad ética y de sanción administrativo-disciplinaria, salvo los casos en que hubiera violación evidente de la ley.

ARTICULO 6°.- COMPROMISO. El ingreso a la función pública implica tomar conocimiento del presente Código y asumir el compromiso de su debido cumplimiento.



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ARTICULO 7°.- CONSULTAS. En aquellos casos en los cuales objetiva y razonablemente se genere una situación de incertidumbre con relación a una cuestión concreta de naturaleza ética, el funcionario público debe consultar a la Oficina Nacional de Ética Pública.

CAPITULO III

PRINCIPIOS GENERALES

ARTICULO 8°.- PROBIDAD. El funcionario público debe actuar con rectitud y honradez, procurando satisfacer el interés general y desechando todo provecho o ventaja personal, obtenido por sí o por interpósita persona. También está obligado a exteriorizar una conducta honesta.

ARTICULO 9°.- PRUDENCIA. El funcionario público debe actuar con pleno conocimiento de las materias sometidas a su consideración, con la misma diligencia que un buen administrador emplearía para con sus propios bienes. El ejercicio de la función pública debe inspirar confianza en la comunidad. Asimismo, debe evitar acciones que pudieran poner en riesgo la finalidad de la función pública, el patrimonio del Estado o la imagen que debe tener la sociedad respecto de sus servidores.

ARTICULO 10.- JUSTICIA. El funcionario público debe tener permanente disposición para el cumplimiento de sus funciones, otorgando a cada uno lo que le es debido, tanto en sus relaciones con el Estado, como con el público, sus superiores y subordinados.



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ARTICULO 11.- TEMPLANZA. El funcionario público debe desarrollar sus funciones con respeto y sobriedad, usando las prerrogativas inherentes a su cargo y los medios de que dispone únicamente para el cumplimiento de sus funciones y deberes. Asimismo, debe evitar cualquier ostentación que pudiera poner en duda su honestidad o su disposición para el cumplimiento de los deberes propios del cargo.

ARTICULO 12.- IDONEIDAD. La idoneidad, entendida como aptitud técnica, legal y moral, es condición esencial para el acceso y ejercicio de la función pública.

ARTICULO 13.- RESPONSABILIDAD. El funcionario público debe hacer un esfuerzo honesto para cumplir con sus deberes. Cuanto más elevado sea el cargo que ocupa un funcionario público, mayor es su responsabilidad para el cumplimiento de las disposiciones de este Código.

CAPITULO IV

PRINCIPIOS PARTICULARES

ARTICULO 14.- APTITUD. Quien disponga la designación de un funcionario público debe verificar el cumplimiento de los recaudos destinados a comprobar su idoneidad. Ninguna persona debe aceptar ser designada en un cargo para el que no tenga aptitud.

ARTICULO 15.- CAPACITACION. El funcionario público debe capacitarse para el mejor desempeño de las funciones a su cargo, según lo determinan las normas que rigen el servicio o lo dispongan las autoridades competentes.



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ARTICULO 16.- LEGALIDAD. El funcionario público debe conocer y cumplir la Constitución Nacional, las leyes y los reglamentos que regulan su actividad. Debe observar en todo momento un comportamiento tal que, examinada su conducta, ésta no pueda ser objeto de reproche.

ARTICULO 17.- EVALUACION. El funcionario público debe evaluar los antecedentes, motivos y consecuencias de los actos cuya generación o ejecución tuviera a su cargo.

ARTICULO 18.- VERACIDAD. El funcionario público está obligado a expresarse con veracidad en sus relaciones funcionales, tanto con los particulares como con sus superiores y subordinados, y a contribuir al esclarecimiento de la verdad.

ARTICULO 19.- DISCRECION. El funcionario público debe guardar reserva respecto de hechos o informaciones de los que tenga conocimiento con motivo o en ocasión del ejercicio de sus funciones, sin perjuicio de los deberes y las responsabilidades que le correspondan en virtud de las normas que regulan el secreto o la reserva administrativa.

ARTICULO 20.- TRANSPARENCIA. El funcionario público debe ajustar su conducta al derecho que tiene la sociedad de estar informada sobre la actividad de la Administración.

ARTICULO 21.- DECLARACION JURADA PATRIMONIAL Y FINANCIERA. El funcionario público debe presentar ante la Oficina Nacional de Ética Pública una declaración jurada de su situación patrimonial y financiera, conforme surge del Capítulo IV de la Parte Especial - Régimen de las Declaraciones Juradas Patrimoniales y Financieras.



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El control y seguimiento de la situación patrimonial y financiera de los funcionarios públicos y la reglamentación del régimen de presentación de las declaraciones juradas estarán a cargo de la Oficina Nacional de Etica Pública.

ARTICULO 22.- OBEDIENCIA. El funcionario público debe dar cumplimiento a las órdenes que le imparta el superior jerárquico competente, en la medida que reúnan las formalidades del caso y tengan por objeto la realización de actos de servicio que se vinculen con las funciones a su cargo, salvo el supuesto de arbitrariedad o ilegalidad manifiestas.

ARTICULO 23.- INDEPENDENCIA DE CRITERIO. El funcionario público no debe involucrarse en situaciones, actividades o intereses incompatibles con sus funciones. Debe abstenerse de toda conducta que pueda afectar su independencia de criterio para el desempeño de las funciones.

ARTICULO 24.- EQUIDAD. El empleo de criterios de equidad para adecuar la solución legal a un resultado más justo nunca debe ser ejecutado en contra de los fines perseguidos por las leyes.

ARTICULO 25.- IGUALDAD DE TRATO. El funcionario público no debe realizar actos discriminatorios en su relación con el público o con los demás agentes de la Administración. Debe otorgar a todas las personas igualdad de trato en igualdad de situaciones. Se entiende que existe igualdad de situaciones cuando no median diferencias que, de acuerdo con las normas vigentes, deben considerarse para establecer una prelación. Este principio se aplica también a las relaciones que el funcionario mantenga con sus subordinados.



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ARTICULO 26.- EJERCICIO ADECUADO DEL CARGO. El ejercicio adecuado del cargo involucra el cumplimiento personal del presente Código, así como las acciones encaminadas a la observancia por sus subordinados.

El funcionario público, mediante el uso de su cargo, autoridad, influencia o apariencia de influencia, no debe obtener ni procurar beneficios o ventajas indebidas, para sí o para otros.

Asimismo, con motivo o en ocasión del ejercicio de sus funciones, no debe adoptar represalia de ningún tipo o ejercer coacción alguna contra funcionarios u otras personas, que no emane del estricto ejercicio del cargo.

ARTICULO 27.- USO ADECUADO DE LOS BIENES DEL ESTADO. El funcionario público debe proteger y conservar los bienes del Estado. Debe utilizar los que le fueran asignados para el desempeño de sus funciones de manera racional, evitando su abuso, derroche o desaprovechamiento.

Tampoco puede emplearlos o permitir que otros lo hagan para fines particulares o propósitos que no sean aquellos para los cuales hubieran sido específicamente destinados. No se consideran fines particulares las actividades que, por razones protocolares, el funcionario deba llevar a cabo fuera del lugar u horario en los cuales desarrolla sus funciones.

ARTICULO 28.- USO ADECUADO DEL TIEMPO DE TRABAJO. El funcionario público debe usar el tiempo oficial en un esfuerzo responsable para cumplir con sus quehaceres. Debe desempeñar sus funciones de una manera eficiente y eficaz y velar para que sus subordinados actúen de la misma manera. No debe fomentar, exigir o solicitar a sus subordinados que empleen el tiempo oficial para realizar actividades que no sean las que se les requieran para el desempeño de los deberes a su cargo.



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ARTICULO 29.- COLABORACION. Ante situaciones extraordinarias, el funcionario público debe realizar aquellas tareas que por su naturaleza o modalidad no sean las estrictamente inherentes a su cargo, siempre que ellas resulten necesarias para mitigar, neutralizar o superar las dificultades que se enfrenten.

ARTICULO 30.- USO DE INFORMACION. El funcionario público debe abstenerse de difundir toda información que hubiera sido calificada como reservada o secreta conforme a las disposiciones vigentes. No debe utilizar, en beneficio propio o de terceros o para fines ajenos al servicio, información de la que tenga conocimiento con motivo o en ocasión del ejercicio de sus funciones y que no esté destinada al público en general.

ARTICULO 31.- OBLIGACION DE DENUNCIAR. El funcionario público debe denunciar ante su superior o las autoridades correspondientes, los actos de los que tuviera conocimiento con motivo o en ocasión del ejercicio de sus funciones y que pudieran causar perjuicio al Estado o constituir un delito o violaciones a cualquiera de las disposiciones contenidas en el presente Código.

ARTICULO 32.- DIGNIDAD Y DECORO. El funcionario público debe observar una conducta digna y decorosa, actuando con sobriedad y moderación. En su trato con el público y con los demás funcionarios, debe conducirse en todo momento con respeto y corrección.

ARTICULO 33.- HONOR. El funcionario público al que se le impute la comisión de un delito de acción pública, debe facilitar la investigación e implementar las medidas administrativas y judiciales necesarias para esclarecer la situación a fin de dejar a salvo su honra y la dignidad de su cargo. Podrá contar con el patrocinio gratuito del servicio jurídico oficial correspondiente.



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ARTICULO 34.- TOLERANCIA. El funcionario público debe observar, frente a las críticas del público y de la prensa, un grado de tolerancia superior al que, razonablemente, pudiera esperarse de un ciudadano común.

ARTICULO 35.- EQUILIBRIO. El funcionario público debe actuar, en el desempeño de sus funciones, con sentido práctico y buen juicio.

PARTE ESPECIAL

CAPITULO I

REGIMEN DE REGALOS Y OTROS BENEFICIOS

SECCION PRIMERA

BENEFICIOS DE ORIGEN EXTERNO

ARTICULO 36.- BENEFICIOS PROHIBIDOS. El funcionario público no debe, directa o indirectamente, ni para sí ni para terceros, solicitar, aceptar o admitir dinero, dádivas, beneficios, regalos, favores, promesas u otras ventajas en las siguientes situaciones:

- a) Para hacer, retardar o dejar de hacer tareas relativas a sus funciones.
- b) Para hacer valer su influencia ante otro funcionario público, a fin de que éste haga, retarde o deje de hacer tareas relativas a sus funciones.
- c) Cuando resultare que no se habrían ofrecido o dado si el destinatario no desempeñara ese cargo o función.

ARTICULO 37.- PRESUNCIONES. Se presume especialmente que el beneficio está prohibido si proviene de una persona o entidad que:



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- a) Lleve a cabo actividades reguladas o fiscalizadas por el órgano o entidad en el que se desempeña el funcionario.
- b) Gestione o explote concesiones, autorizaciones, privilegios o franquicias otorgados por el órgano o entidad en el que se desempeña el funcionario.
- c) Sea o pretendiera ser contratista o proveedor de bienes o servicios de la Administración Pública Nacional.
- d) Procure una decisión o acción del órgano o entidad en el que se desempeña el funcionario.
- e) Tenga intereses que pudieran verse significativamente afectados por la decisión, acción, retardo u omisión del órgano o entidad en el que se desempeña el funcionario.

ARTICULO 38.- EXCEPCIONES. Quedan exceptuados de la prohibición establecida en el Artículo 36 inciso c):

- a) Los reconocimientos protocolares recibidos de gobiernos, organismos internacionales o entidades sin fines de lucro, en las condiciones en las que la ley o la costumbre oficial admitan esos beneficios.
- b) Los gastos de viaje y estadía recibidos de gobiernos, instituciones de enseñanza o entidades sin fines de lucro, para el dictado de conferencias, cursos o actividades académico-culturales, o la participación en ellas, siempre que ello no resultara incompatible con las funciones del cargo o prohibido por normas especiales.
- c) Los regalos o beneficios que por su valor exiguo, según las circunstancias, no pudieran razonablemente ser considerados como un medio tendiente a afectar la recta voluntad del funcionario.

La autoridad de aplicación determinará los supuestos en que corresponde el registro e incorporación al patrimonio del Estado de los beneficios recibidos en las



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condiciones del inciso a) los que, según su naturaleza, se destinarán a fines de salud, acción social, educación o al patrimonio histórico cultural.

SECCION SEGUNDA

BENEFICIOS OTORGADOS ENTRE FUNCIONARIOS

ARTICULO 39.- BENEFICIOS PROHIBIDOS. El funcionario público no debe, directa o indirectamente, otorgar ni solicitar regalos, beneficios, promesas u otras ventajas a otros funcionarios.

ARTICULO 40.- EXCLUSION. Quedan excluidos de la prohibición establecida en el artículo precedente, los regalos de menor cuantía que se realicen por razones de amistad o relaciones personales con motivo de acontecimientos en los que resulta usual efectuarlos.

CAPITULO II

IMPEDIMENTOS FUNCIONALES

ARTICULO 41.- CONFLICTO DE INTERESES. A fin de preservar la independencia de criterio y el principio de equidad, el funcionario público no puede mantener relaciones ni aceptar situaciones en cuyo contexto sus intereses personales, laborales, económicos o financieros pudieran estar en conflicto con el cumplimiento de los deberes y funciones a su cargo.

Tampoco puede dirigir, administrar, asesorar, patrocinar, representar ni prestar servicios, remunerados o no, a personas que gestionen o exploten concesiones o privilegios o que sean proveedores del Estado, ni mantener vínculos que le



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signifiquen beneficios u obligaciones con entidades directamente fiscalizadas por el órgano o entidad en la que se encuentre desarrollando sus funciones.

ARTICULO 42.- EXCUSACION. El funcionario público debe excusarse en todos aquellos casos en los que pudiera presentarse conflicto de intereses.

ARTICULO 43.- NEPOTISMO O FAVORITISMO. El funcionario público no debe designar parientes o amigos para que presten servicios en la repartición a su cargo prescindiendo del requisito de idoneidad debidamente acreditado.

ARTICULO 44.- ACUMULACION DE CARGOS. El funcionario que desempeñe un cargo en la Administración Pública Nacional no debe ejercer otro cargo remunerado en el ámbito nacional, provincial o local, sin perjuicio de las excepciones que establezcan y regulen los regímenes especiales.

ARTICULO 45.- PRESENTACION DE DECLARACION JURADA DE ACTIVIDADES. El funcionario público debe declarar los cargos y funciones, públicos y privados, ejercidos durante el año anterior a la fecha de ingreso y los que desempeñe posteriormente.

ARTICULO 46.- PERIODO DE CARENCIA. El funcionario público no debe, durante su empleo y hasta UN (1) año después de su egreso, efectuar o patrocinar para terceros, trámites o gestiones administrativas, se encuentren o no directamente a su cargo, ni celebrar contratos con la Administración Pública Nacional, cuando tengan vinculaciones funcionales con la actividad que desempeñe o hubiera desempeñado.



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CAPITULO III

SANCIONES

ARTICULO 47.- SANCIONES. La violación de lo establecido en el presente Código hace pasible a los funcionarios públicos de la aplicación de las sanciones previstas en el Régimen Jurídico Básico de la Función Pública o en el régimen que le sea aplicable en virtud del cargo o función desempeñada, sin perjuicio de las responsabilidades civiles y penales establecidas en las leyes.

ARTICULO 48.- PROCEDIMIENTO. En caso de violaciones al presente Código, los responsables de cada jurisdicción o entidad, de oficio o a requerimiento de la Oficina Nacional de Ética Pública, deben instruir sumario o poner en funcionamiento los mecanismos necesarios para deslindar las responsabilidades que en cada caso correspondan, con intervención de los servicios jurídicos respectivos.

ARTICULO 49.- REGISTRO. Las resoluciones firmes recaídas en los sumarios sustanciados con motivo de las transgresiones a este Código deben ser comunicadas a la Oficina Nacional de Ética Pública, la que deberá llevar un registro actualizado de ellas.



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CAPITULO IV

REGIMEN DE LAS DECLARACIONES

JURADAS PATRIMONIALES Y FINANCIERAS

SECCION PRIMERA

CARACTER DE LA DECLARACION JURADA PATRIMONIAL Y FINANCIERA

ARTICULO 50.- PUBLICIDAD. El contenido de las Declaraciones Juradas Patrimoniales y Financieras tendrá carácter público y podrá ser consultado, en la Oficina Nacional de Ética Pública, mediante la presentación por escrito de una solicitud indicando:

- a) Nombre, tipo y número de documento, profesión y domicilio del consultante.
- b) En su caso, nombre y domicilio de la entidad en cuya representación se realiza la consulta.
- c) Interés que motiva la consulta.
- d) Que se notifica de las limitaciones que existen para la obtención y utilización del contenido de la Declaración Jurada Patrimonial y Financiera.

La Oficina Nacional de Ética Pública podrá disponer la publicación en el Boletín Oficial de la información sobre el cumplimiento de la presentación de la Declaración Jurada Patrimonial y Financiera de los obligados. Dicha información también podrá ser difundida mediante la administración de una página propia en INTERNET.



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ARTICULO 51.- LIMITACIONES. La información obtenida de la Declaración Jurada Patrimonial y Financiera no podrá ser utilizada para:

- a) Propósitos ilegales.
- b) Fines lucrativos, de especulación o exclusivamente comerciales.
- c) Determinar el nivel de crédito de una persona.
- d) Obtener dinero u otros beneficios con fines políticos, en forma directa o indirecta.

ARTICULO 52.- COMUNICACION AL FUNCIONARIO. La Oficina Nacional de Ética Pública deberá poner en conocimiento del funcionario declarante que se ha entregado información correspondiente a su declaración jurada, indicando los datos del interesado que la haya solicitado.

SECCION SEGUNDA

SUJETOS OBLIGADOS - PROCEDIMIENTO

ARTICULO 53.- SUJETOS COMPRENDIDOS. Están comprendidos en la obligación de presentar la Declaración Jurada Patrimonial y Financiera los siguientes funcionarios:

- a) Presidente y Vicepresidente de la Nación.
- b) Jefe de Gabinete de Ministros, Ministros, Secretarios de la Presidencia de la Nación, Secretarios y Subsecretarios.
- c) Autoridades superiores de los organismos descentralizados, cualquiera sea su naturaleza jurídica, comprendidos dentro del ámbito de aplicación establecido en el artículo 4°.
- d) Interventores federales y funcionarios que designen con nivel no inferior a Director o equivalente.



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- e) Funcionarios con categoría o función no inferior a Director, Gerente o niveles equivalentes, de carácter permanente o transitorio, y titulares de cargos con funciones ejecutivas en todos sus niveles, de la Administración Pública Nacional centralizada o descentralizada, dentro del ámbito de aplicación establecido en el artículo 4°.
- f) Representantes del Estado Nacional en entidades interjurisdiccionales e internacionales.
- g) Funcionarios de las categorías A, B y C del cuadro permanente activo del Servicio Exterior de la Nación, Embajadores políticos y funcionarios de otros organismos de la Administración Pública Nacional que presten servicios en el exterior.
- h) Titulares de Unidades Ejecutoras de Proyectos financiados total o parcialmente por organismos internacionales de crédito y coordinadores de programas.
- i) Personal en actividad de las Fuerzas Armadas, Policía Federal, Gendarmería Nacional, Prefectura Naval y Servicio Penitenciario Federal con jerarquía de oficial superior o equivalente.
- j) Funcionarios de la Administración Federal de Ingresos Públicos y de la Dirección Nacional de Migraciones con nivel no inferior a Jefe de Departamento o equivalente y quienes cumplan funciones de control.
- k) Interventores o liquidadores de organismos pertenecientes o administrados por el Estado Nacional.
- l) Rectores, Decanos, Secretarios de Universidades y Facultades Nacionales.
- m) Miembros de los organismos administrativos con funciones jurisdiccionales.
- n) Asesores de Gabinete.



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- o) Funcionarios que intervengan en la gestión de fondos públicos; administren patrimonios públicos o privados por decisión de la Administración Pública Nacional; integren comisiones de adjudicación en procesos licitatorios; sean responsables de la compra o recepción de bienes o de otorgar habilitaciones o autorizaciones.

ARTICULO 54.- CONTENIDO. Las Declaraciones Juradas Patrimoniales y Financieras contendrán una nómina, detallada y completa, de los bienes, créditos, deudas e ingresos del declarante, su cónyuge e hijos menores no emancipados, con especial individualización de los que se indican a continuación:

- a) Bienes inmuebles, radicados en el país o en el extranjero, y las mejoras realizadas, con indicación de su valor fiscal, fecha de adquisición y origen de los fondos.
- b) Bienes muebles registrables, radicados en el país o en el extranjero.
- c) Otros bienes muebles como equipos, instrumental, joyas, objetos de arte y semovientes, cuyo valor sea superior a cinco mil pesos (\$5.000.-) en forma individual o a veinte mil pesos (\$20.000.-) en su conjunto.
- d) Inversiones en títulos, acciones y valores, cotizables en Bolsa o no; participación en explotaciones personales o en sociedades, con indicación del valor, fecha de adquisición y origen de los fondos.
- e) Depósitos en bancos u otras entidades financieras en el país o en el extranjero.
- f) Créditos y deudas hipotecarias, prendarias y comunes.
- g) Dinero en efectivo, en moneda nacional o extranjera.
- h) Funciones desempeñadas en carácter de fideicomisario, mandatario, gestor o consultor de cualquier tipo de sociedad u organización, con o sin fines de lucro.



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- i) Fuente, tipo y monto de los ingresos y egresos derivados del trabajo en relación de dependencia, de la prestación de servicios para terceros sin relación de dependencia o del ejercicio de otras actividades o funciones independientes.
- j) Ingresos derivados de rentas y sistemas previsionales.

ARTICULO 55.- OPORTUNIDAD Y CARACTER DE LA PRESENTACION.

El funcionario comprendido en el presente régimen deberá entregar la Declaración Jurada Patrimonial y Financiera en dos ejemplares idénticos, en sobres cerrados de un mismo tenor, ante la oficina de personal, administración o recursos humanos de la respectiva jurisdicción u organismo, dentro de los DIEZ (10) días siguientes a la asunción del cargo o notificación del acto mediante el cual se produjo su designación, promoción o asignación de funciones, y al cese de su función.

La Oficina Nacional de Ética Pública podrá otorgar prórroga para la entrega de la Declaración Jurada Patrimonial y Financiera, cuando razones fundadas así lo justifiquen, la que no podrá exceder el plazo de TREINTA (30) días.

ARTICULO 56.- RENOVACION. Las Declaraciones Juradas Patrimoniales y Financieras deberán ser renovadas anualmente, en las fechas que determine la Oficina Nacional de Ética Pública para cada jurisdicción y organismo.

ARTICULO 57.- TERMINOS DE LA PRESENTACION. La Oficina Nacional de Ética Pública será responsable de hacer conocer a los obligados los términos dentro de los cuales deberán dar cumplimiento a la presentación de las Declaraciones Juradas Patrimoniales y Financieras, así como sus alcances, cuando fuere solicitado.



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ARTICULO 58.- RECIBO PROVISORIO. La oficina de personal, administración o recursos humanos de cada jurisdicción u organismo extenderá al funcionario declarante un recibo provisorio, al momento de la efectiva presentación de la Declaración Jurada Patrimonial y Financiera. Asimismo, esta dependencia será responsable de llevar un registro de los funcionarios obligados a la presentación, en el cual deberá dejar constancia del cumplimiento.

ARTICULO 59.- PLAZO DE REMISION. Uno de los ejemplares de la Declaración Jurada Patrimonial y Financiera presentada por el funcionario obligado, deberá ser remitido por la dependencia respectiva, en sobre cerrado, a la Oficina Nacional de Ética Pública, dentro de los CINCO (5) días siguientes al vencimiento del plazo previsto para su presentación. El otro ejemplar será remitido a la Escribanía General de Gobierno de la Nación, a los efectos de su conservación y custodia, de acuerdo con lo previsto por la Ley Nº 21.890.

ARTICULO 60.- CONSTANCIAS DE PRESENTACION. La remisión de las Declaraciones Juradas Patrimoniales y Financieras por parte de las respectivas dependencias a la Oficina Nacional de Ética Pública, deberá ser acompañada por un detalle en el que se dejará constancia de los funcionarios que hubieran presentado o no dicha declaración una vez vencido el plazo de intimación previsto en el artículo siguiente.

ARTICULO 61.- INTIMACION. Vencido el plazo de presentación de la Declaración Jurada Patrimonial y Financiera sin que ésta se hubiera efectivizado, la respectiva oficina de personal, administración o recursos humanos deberá intimar al responsable para que, dentro de los CINCO (5) días siguientes, proceda a su cumplimiento. Dicha circunstancia deberá ser notificada a la Oficina Nacional de Ética Pública.



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La falta de presentación de la Declaración Jurada Patrimonial y Financiera una vez vencido el plazo indicado en el párrafo precedente, será considerada falta grave de acuerdo con lo establecido en los respectivos regímenes.

La Oficina Nacional de Ética Pública deberá notificar el incumplimiento del funcionario a la máxima autoridad de la cual éste dependa, a fin de que se disponga la instrucción de las respectivas actuaciones sumariales a través de la Procuración del Tesoro de la Nación o del servicio jurídico correspondiente.

ARTICULO 62.- APERTURA DEL SOBRE Y RECIBO DEFINITIVO. La Oficina Nacional de Ética Pública procederá a la apertura del sobre y a controlar que la Declaración Jurada Patrimonial y Financiera se encuentre debidamente confeccionada y completa, extendiendo el recibo definitivo en caso de que así fuera.

Cuando se detecten errores u omisiones, deberá requerirse al funcionario declarante que salve el error u omisión en que hubiera incurrido dentro del plazo de CINCO (5) días. El incumplimiento por parte del requerido será considerado falta grave.

El recibo definitivo emitido por la Oficina Nacional de Ética Pública será remitido a los funcionarios, por intermedio de la oficina de personal, administración o recursos humanos de la respectiva jurisdicción u organismo al que pertenezca.

ARTICULO 63.- CARACTER DEL RECIBO DEFINITIVO. El recibo que extienda la Oficina Nacional de Ética Pública no implicará pronunciamiento alguno acerca de los datos consignados en la Declaración Jurada Patrimonial y Financiera.

ARTICULO 64.- CONTROL Y SEGUIMIENTO. La Oficina Nacional de Ética Pública podrá efectuar todos los controles necesarios y solicitar al funcionario declarante las aclaraciones que considere pertinentes.



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En este último supuesto, le otorgará un plazo no mayor a CINCO (5) días para que proceda a brindar las explicaciones o aclaraciones requeridas.

En caso de considerar insatisfactorias o insuficientes las aclaraciones brindadas o cuando de las verificaciones realizadas surgieran irregularidades, la Oficina Nacional de Ética Pública, con el respectivo dictamen, deberá remitir lo actuado a la máxima autoridad de quien dependa el funcionario, la que deberá disponer la instrucción de las pertinentes actuaciones sumariales a través de la Procuración del Tesoro de la Nación o del servicio jurídico respectivo. La resolución que se dicte en el respectivo sumario, una vez firme, deberá ser comunicada a la Oficina Nacional de Ética Pública.

En caso de tratarse de autoridades sujetas al procedimiento del juicio político establecido por los artículos 53 y 60 de la Constitución Nacional, la Oficina Nacional de Ética Pública procederá a poner tal circunstancia en conocimiento del Poder Ejecutivo Nacional y de la Honorable Cámara de Diputados del Congreso de la Nación.

ARTICULO 65.- PLAZO DE GUARDA. Las Declaraciones Juradas Patrimoniales y Financieras deberán ser conservadas por la Escribanía General de Gobierno de la Nación y la Oficina Nacional de Ética Pública, por el término de DIEZ (10) años contados a partir del cese en las funciones del respectivo funcionario, o por el plazo que impongan las actuaciones administrativas o judiciales que lo involucren.

ARTICULO 66.- REQUERIMIENTO DE LA DECLARACION. La Declaración Jurada Patrimonial y Financiera original o el sobre cerrado que la contenga, sólo podrán ser entregados por la Oficina Nacional de Ética Pública o la Escribanía General de Gobierno de la Nación, en los términos y condiciones que establezcan las leyes de la Nación o en los siguientes supuestos:



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- a) Cuando se instruya sumario administrativo y por solicitud de la Procuración del Tesoro de la Nación.
- b) A solicitud del Síndico General de la Nación, en el marco de las atribuciones que le acuerda la Ley N° 24.156.
- c) A solicitud del Procurador General de la Nación en el ámbito de su competencia.
- d) A requerimiento del Juez competente.

En todos los casos, la Declaración Jurada Patrimonial y Financiera o el sobre que la contenga, según sea la dependencia requerida, deberán entregarse bajo recibo.

DISPOSICIONES COMPLEMENTARIAS

ARTICULO 67.- VALIDEZ DE TODOS LOS REGIMENES. Lo dispuesto en el presente Código no impide la aplicación de otros regímenes vigentes.

ARTICULO 68.- PLAZOS. A los efectos del cómputo de los plazos establecidos en el presente Código, sólo se considerarán los días hábiles administrativos.

TAB B

THE ROYAL BARBADOS POLICE FORCE

CODE OF ETHICS

AS A MEMBER OF THE ROYAL BARBADOS POLICE FORCE, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

I WILL keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of the Force. Whatever I see or hear of a confidential nature that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I WILL never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without unnecessary force or violence and never accepting gratuities.

I RECOGNISE the calling of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God and to my chosen profession 'Law Enforcement'.



TAB C



CANADA

**Conflict of Interest
and
Post-Employment Code
for
Public Office Holders**

June 1994

Copies available from the
Office of the Ethics Counsellor
Ottawa, Canada
K1A 0C9

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CONFLICT OF INTEREST AND POST-EMPLOYMENT CODE FOR PUBLIC OFFICE HOLDERS

Short title

1. This Code may be cited as the *Conflict of Interest Code*.

Part I

OBJECT

2. The object of this Code is to enhance public confidence in the integrity of public office holders and the decision-making process in government
 - (a) while encouraging experienced and competent persons to seek and accept public office;
 - (b) while facilitating interchange between the private and the public sector;
 - (c) by establishing clear rules of conduct respecting conflict of interest for, and post-employment practices applicable to, all public office holders; and
 - (d) by minimizing the possibility of conflicts arising between the private interests and public duties of public office holders and providing for the resolution of such conflicts in the public interest should they arise.

PRINCIPLES

3. Every public office holder shall conform to the following principles.

Ethical Standards

- (1) Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

Public Scrutiny

- (2) Public office holders have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

Decision-Making

- (3) Public office holders, in fulfilling their official duties and responsibilities, shall make decisions in the public interest and with regard to the merits of each case.

Private Interests

- (4) Public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate.

Public Interest

- (5) On appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public

office holder, the conflict shall be resolved in favour of the public interest.

Gifts and Benefits

- (6) Public office holders shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public office holder.

Preferential Treatment

- (7) Public office holders shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person.

Insider Information

- (8) Public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public.

Government Property

- (9) Public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.

Post-Employment

- (10) Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

Part II

CONFLICT OF INTEREST COMPLIANCE MEASURES

INTERPRETATION

- 4.(1) For the purposes of this Part and the Schedule, "public office holder" means:
- (a) a Minister of the Crown, including a Secretary of State;
 - (b) a parliamentary secretary;
 - (c) a member of ministerial staff, except public servants;
 - (d) a full-time Governor in Council appointee, other than:
 - (i) a Lieutenant-Governor of a province,
 - (ii) officers and staff of the Senate, House of Commons and Library of Parliament;
 - (iii) a public servant who is a head of mission as defined in the *Department of Foreign Affairs and International Trade Act*, [amended September 25, 1998].
 - (iv) a judge who receives a salary under the *Judges Act*, and
 - (v) a commissioned officer of the Royal Canadian Mounted Police, other than the Commissioner of the Royal Canadian Mounted Police; or
 - (e) a full-time ministerial appointee designated by the appropriate Minister of the Crown as a public office holder.

"Public Registry" means the registry where public documents are maintained by the Ethics Counsellor for examination by the public.

- (2) Staff of federal boards, commissions, and tribunals as defined in the *Federal Court Act*, separate employers as defined under the *Public Service Staff Relations Act*, the Canadian Armed Forces and the Royal Canadian Mounted Police, and part-time ministerial or Governor in Council appointees are subject to the Principles set out in Part I and

such other compliance measures as may be determined by the head of the organization in question, for whose application that individual is responsible.

- (3) Crown corporations as set out in the *Financial Administration Act* shall be subject to compliance measures established by, and in accordance with, the established practices of their own organization.
- (4) Such provisions of this Part as may be relevant shall be brought to the attention of Lieutenant-Governors at the time of their appointment.

DUTIES OF THE ETHICS COUNSELLOR

- 5.(1) Under the general direction of the Clerk of the Privy Council, the Ethics Counsellor is charged with the administration of this Code and the application of the conflict of interest compliance measures set out in this Part as they apply to public office holders.
 - (2) Information concerning the private interests of a public office holder provided to the Ethics Counsellor is confidential until a Public Declaration, if any, is made with respect to that information.
 - (3) It is the responsibility of the Ethics Counsellor to ensure:
 - (a) that information provided under subsection (2) is placed in personal confidential files and in secure safekeeping;
 - (b) that any information provided by public office holders for a public purpose is placed in personal unclassified files in the Public Registry; and
 - (c) that following an individual's departure from public office, the files referred to in (a) and (b) are destroyed in accordance with National Archives policy and the *Privacy Act*.

CERTIFICATION

6. Before or on assuming their official duties and responsibilities, public office holders shall sign a document certifying that, as a condition of their holding office, they will observe this Code.

COMPLIANCE ARRANGEMENTS

- 7.(1) Once the arrangements made by a public office holder to comply with the conflict of interest compliance measures set out in this Code are completed, a Summary Statement described in subsection (2) and any Public Declaration made pursuant to sections 11, 19 and 22 shall be signed by the office holder and a certified copy of the Statement and any Public Declaration shall be placed in the Public Registry.
- (2) The public office holder shall, in the Summary Statement,
 - (a) state the methods of compliance used to comply with the conflict of interest compliance measures; and
 - (b) certify that he or she is fully cognizant of the post-employment compliance measures set out in Part III, where applicable.
- (3) Where there is doubt as to which method is appropriate in order that a public office holder may comply with the Code, the Ethics Counsellor shall determine the appropriate method and, in doing so, shall try to achieve mutual agreement with the public office holder.
- (4) All arrangements made by a public office holder to comply with the conflict of interest compliance measures set out in this Part shall be approved
 - (a) in the case of Ministers of the Crown, by the Prime Minister; and
 - (b) in the case of all other public office holders, by the Ethics Counsellor.

- (5) The arrangements made by public office holders and their obligations under the Code will be reviewed annually by the Ethics Counsellor and the public office holder.
- (6) On the recommendation of the Ethics Counsellor, a public office holder may be reimbursed for administrative costs incurred as a result of arrangements made under this Code, as set out in the Schedule.
- (7) A public office holder shall not sell or transfer assets to family members or other persons for the purpose of circumventing the conflict of interest compliance measures set out in this Part.

TIME LIMITS

8. Unless otherwise authorized by the Ethics Counsellor, every public office holder shall,
 - (a) within 60 days after appointment, make a Confidential Report as required under sections 9 and 16;
 - (b) within 120 days after appointment
 - (i) where required, make a Public Declaration pursuant to sections 11, 19 and 22;
 - (ii) divest controlled assets as required under section 12, and
 - (iii) sign a Summary Statement for placing in the Public Registry pursuant to section 7;
 - (c) within 30 days after receipt of a gift, hospitality or other benefit, notify the Ethics Counsellor as required under section 22, and within 60 days make a Public Declaration as required in that section; and
 - (d) within 30 days, inform the Ethics Counsellor of any changes in his or her assets, liabilities and outside activities.

ASSETS AND LIABILITIES

Confidential Report

- 9.(1) A public office holder shall make a Confidential Report to the Ethics Counsellor of all assets and of all direct and contingent liabilities. In the case of Ministers, Secretaries of State and Parliamentary Secretaries, the public office holder shall make arrangements for this information to be disclosed as well by their spouses and dependent children. Information on spouses and dependent children is only for use by the Ethics Counsellor in advising the public office holder on his or her own compliance arrangements.
- (2) Assets that are not exempt assets are either "declarable assets" or "controlled assets" unless, after a Confidential Report, the Ethics Counsellor determines that they are of such a value that they do not constitute any risk of conflict of interest in relation to the public office holder's duties and responsibilities.

Exempt Assets

10. Assets and interests for the private use of public office holders and their families and assets that are not of a commercial character are not subject to public declaration or divestment. Such assets, hereinafter referred to as "exempt assets", include:
- (a) residences, recreational property and farms used or intended for use by public office holders or their families;
 - (b) household goods and personal effects;
 - (c) works of art, antiques and collectibles;
 - (d) automobiles and other personal means of transportation;
 - (e) cash and deposits;
 - (f) Canada Savings Bonds and other similar investments in securities of fixed value issued or guaranteed by any level of government in Canada or agencies of those governments;

- (g) registered retirement savings plans that are not self-administered;
- (h) investments in open-ended mutual funds;
- (i) guaranteed investment certificates and similar financial instruments;
- (j) annuities and life insurance policies;
- (k) pension rights;
- (l) money owed by a previous employer, client or partnership; and
- (m) personal loans receivable from the members of the public office holder's immediate family and small personal loans receivable from other persons where the public office holder has loaned the moneys receivable.

Declarable Assets

- 11.(1) A public office holder shall make a Public Declaration of assets that are not controlled assets, as defined under section 12, in order to allow the office holder to deal with those assets, subject to exercising vigilance to ensure that such dealings cannot give rise to a conflict of interest.
- (2) Declarable assets include:
 - (a) interests in businesses that do not contract with the government, and do not own or control publicly traded securities, other than incidentally, and whose stocks and shares are not traded publicly;
 - (b) farms under commercial operation;
 - (c) real property that is not an exempt asset as described in section 10; and
 - (d) assets that are beneficially owned, that are not exempt assets as described in section 10, and that are administered at arm's length.
- (3) Declarable assets that are not publicly declared pursuant to subsection (1) shall, for the purposes of section 13, be considered to be controlled assets and divested.

Controlled Assets

- 12.(1) For the purposes of this section and section 13, "controlled assets" means assets that could be directly or indirectly affected as to value by Government decisions or policy.
- (2) Controlled assets, other than assets that may be retained under subsections 9(2) or 13(5), shall be divested.
- (3) Controlled assets include:
 - (a) publicly traded securities of corporations and foreign governments, whether held individually or in an investment portfolio account;
 - (b) self-administered Registered Retirement Savings Plans, except when exclusively composed of exempt assets as described in section 10; and
 - (c) commodities, futures and foreign currencies held or traded for speculative purposes.

Divestment of Controlled Assets

- 13.(1) Subject to subsection (5), controlled assets are usually divested by selling them in an arm's length transaction or by making them subject to a trust or management agreement, the most common of which are set out in the Schedule.
- (2) The Ethics Counsellor has the responsibility for determining that a trust or management agreement meets the requirements of this Code. Before an arrangement is executed or when a change is contemplated, a determination that the arrangement meets the requirements of this Code shall be obtained from the Ethics Counsellor.
- (3) Confirmation of sale or a copy of any executed instrument shall be filed with the Ethics Counsellor. With the exception of a statement that a sale has taken place or that a trust or management agreement exists, all information relating to the sale and the arrangement is confidential.
- (4) For the purposes of this Code, trust or management arrangements shall be such that they do not leave in the

hands of the public office holder any power of management or decision over the assets.

- (5) Subject to the approval of the Ethics Counsellor, a public office holder is not required to divest controlled assets that are:
 - (a) pledged to a lending institution as collateral; or
 - (b) of such value as to be practically non-marketable.

Liabilities

14. The Ethics Counsellor may require, with respect to liabilities, that particular arrangements be made to prevent any conflict of interest situation from arising.

OUTSIDE ACTIVITIES

General

15. Public office holders' participation in activities outside their official duties and responsibilities is often in the public interest. Subject to sections 16 to 19, such participation is acceptable where it is not inconsistent with their official duties and responsibilities and does not call into question their capacity to perform their official duties and responsibilities objectively.

Confidential Report of Outside Activities

16. Public office holders shall provide to the Ethics Counsellor in a Confidential Report a listing of all their outside activities, including those in which they were engaged during the two-year period before they assumed their official duties and responsibilities. In the case of Ministers, Secretaries of State and Parliamentary Secretaries, the public office holder shall make arrangements for this information to be disclosed as well by their spouses and dependent children. These lists shall include all involvements in activities of a philanthropic, charitable or non-commercial character and involvements as trustee, executor or under power of attorney.

Prohibited Activities

17. Subject to section 18, public office holders shall not, outside their official duties,
- (a) engage in the practice of a profession;
 - (b) actively manage or operate a business or commercial activity;
 - (c) retain or accept directorships or offices in a financial or commercial corporation;
 - (d) hold office in a union or professional association; or
 - (e) serve as a paid consultant.

Permissible Activities

- 18.(1) When the activities described in section 17 relate to the official duties and responsibilities of a public office holder, the public office holder may, in exceptional circumstances and with the approval required by subsection 7(4) become or remain involved in them, but may not accept remuneration for any activity, except as provided in subsections (3) and (4).
- (2) A public office holder may with the approval required by subsection 7(4) retain or accept directorships in organizations of a philanthropic, charitable or non-commercial character, but the office holder shall take great care to prevent conflicts of interest from arising.
- (3) Where the Prime Minister or a person designated by the Prime Minister is of the opinion that it is in the public interest, full-time Governor in Council appointees to Crown Corporations, as defined in the *Financial Administration Act*, may retain or accept directorships or offices in a financial or commercial corporation, and accept remuneration therefore, in accordance with compensation policies for Governor in Council appointees as determined from time to time.
- (4) Ministerial support staff may, in exceptional circumstances and with the approval required by subsection 7(4), become or remain involved in activities that do not place on them

demands inconsistent with their official duties and responsibilities or call into question their capacity to perform their official duties and responsibilities objectively.

Public Declaration of Outside Activities

- 19.(1) A public office holder shall make a Public Declaration of the activities referred to in section 18 and of directorships and official positions listed in a confidential report under section 16.
- (2) In co-operation with a public office holder, the Ethics Counsellor shall prepare the Public Declaration of outside activities to be made by that office holder.

GIFTS, HOSPITALITY AND OTHER BENEFITS

When Declined

20. Gifts, hospitality or other benefits including those described in section 21 that could influence public office holders in their judgment and performance of official duties and responsibilities shall be declined.

When Permissible

- 21.(1) Any gifts, hospitality or other benefits of a value of \$200 or less from any one source in a twelve-month period need not be disclosed to the Office of the Ethics Counsellor.
- (2) Acceptance by public office holders of offers of gifts, hospitality or other benefits, greater than \$200, arising out of activities associated with the performance of their official duties and responsibilities is not prohibited if such gifts, hospitality or other benefits:
 - (a) are within the bounds of propriety, a normal expression of courtesy or protocol or within the normal standards of hospitality;
 - (b) are not such as to bring suspicion on the office holder's objectivity and impartiality; and

(c) would not compromise the integrity of the Government.

- (3) Gifts, hospitality and other benefits of reasonable value received from governments or in connection with an official or public event are permitted, as are gifts, hospitality and other benefits from family members and close personal friends.

Public Declaration Required

- 22.(1) Notwithstanding section 21, where a public office holder directly or indirectly receives any gift, hospitality or other benefit that has a value of \$200 or more, other than a gift, hospitality or other benefit from a family member or close personal friend, the public office holder shall notify the Ethics Counsellor and make a Public Declaration that provides sufficient detail to identify the gift, hospitality or other benefit received, the donor, and the circumstances.
- (2) Where there is doubt as to the need for a Public Declaration or the appropriateness of accepting an offer of a gift, hospitality or other benefit, public office holders shall consult the Ethics Counsellor.

AVOIDANCE OF PREFERENTIAL TREATMENT

- 23.(1) A public office holder shall take care to avoid being placed or the appearance of being placed under an obligation to any person or organization, or the representative of a person or organization, that might profit from special consideration on the part of the office holder.
- (2) In the formulation of government policy or the making of decisions, a public office holder shall ensure that no persons or groups are given preferential treatment based on the individuals hired to represent them.
- (3) A public office holder shall not accord preferential treatment in relation to any official matter to family members or friends or to organizations in which they, family members or friends, have an interest.

- (4) Ministers and Secretaries of State should not hire or contract with members of their immediate families, that is, their spouse, parents, children and siblings. As well, they should not permit departments or agencies for which they are responsible, or to which they are assigned, to hire or contract with members of their immediate families.
- (5) Ministers and Secretaries of State and the departments or agencies for which they are responsible should not hire or contract with the immediate family of another Minister, Secretary of State or party colleague in Parliament except by means of an impartial administrative process in which the Minister or Secretary of State plays no part in the selection of a candidate or the negotiation of the contract. Appointments to ministerial exempt staff are not subject to this restriction.

FAILURE TO AGREE

- 24. Where a public office holder and the Ethics Counsellor disagree with respect to the appropriate arrangements necessary to achieve compliance with this Code, the appropriate arrangements shall be determined by the Prime Minister or by a person designated by the Prime Minister.

FAILURE TO COMPLY

- 25. Where a public office holder does not comply with Part II, the office holder is subject to such appropriate measures as may be determined by the Prime Minister, including, where applicable, discharge or termination of appointment.

Part III

POST-EMPLOYMENT COMPLIANCE MEASURES

INTERPRETATION

26. For purposes of this Part, "public office holder" refers to the same positions subject to Part II, as set out in section 4, with the exception that ministerial staff must be designated by their Minister or Secretary of State for this Part to apply.

OBJECT

27. Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office. Observance of this Part will minimize the possibilities of:
- (a) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public office holders while in public office;
 - (b) obtaining preferential treatment or privileged access to government after leaving public office;
 - (c) taking personal advantage of information obtained in the course of official duties and responsibilities until it has become generally available to the public; and
 - (d) using public office to unfair advantage in obtaining opportunities for outside employment.

COMPLIANCE MEASURES

Before Leaving Office

- 28.(1) Public office holders should not allow themselves to be influenced in the pursuit of their official duties and responsibilities by plans for or offers of outside employment.
- (2) A public office holder shall disclose in writing to the Ethics Counsellor all firm offers of outside employment that could place the public office holder in a position of conflict of interest.
- (3) A public office holder who accepts an offer of outside employment shall immediately disclose in writing to the Ethics Counsellor as well as to his or her superior, the acceptance of the offer. In such an event, where it is determined by the Ethics Counsellor that the public office holder is engaged in significant official dealings with the future employer, the public office holder shall be assigned to other duties and responsibilities as soon as possible. The period of time spent in public office following such an assignment shall be counted towards the limitation period on employment imposed under section 30.
- (4) The public office holder shall also disclose the acceptance of the offer
 - (a) in the case of Ministers of the Crown and Secretaries of State, to the Prime Minister;
 - (b) in the case of deputy heads, to the Clerk of the Privy Council;
 - (c) in the case of ministerial staff, full-time ministerial appointees and full-time Governor in Council appointees other than those referred to in paragraph (b), to the appropriate Minister of the Crown; and
 - (d) in the case of parliamentary secretaries, to the Minister of the Crown whom the parliamentary secretary assists.

After Leaving Office

Prohibited Activities

- 29.(1) At no time shall a former public office holder switch sides by acting for or on behalf of any person, commercial entity, association, or union in connection with any specific ongoing proceeding, transaction, negotiation or case to which the Government is a party and where the former public office holder acted for or advised the Government.
- (2) Nor shall former public office holders give advice to their clients using information that is not available to the public concerning the programs or policies of the departments with which they were employed, or with which they had a direct and substantial relationship during the period of one year immediately prior to the termination of their service in public office.

Limitation Period

30. Former public office holders, except for Ministers of the Crown for whom the prescribed period is two years, shall not, within a period of one year after leaving office,
- (a) accept appointment to a board of directors of, or employment with, an entity with which they had direct and significant official dealings during the period of one year immediately prior to the termination of their service in public office; or
 - (b) make representations for or on behalf of any other person or entity to any department with which they had direct and significant official dealings during the period of one year immediately prior to the termination of their service in public office.

Reduction of Limitation Period

- 31.(1) On application from a public office holder or former public office holder, the Prime Minister may reduce the limitation period on employment imposed under section 30.

- (2) In deciding whether to reduce the limitation period on employment imposed under section 30, the Prime Minister will consider whether the public interest in granting the reduction outweighs the public interest in maintaining the prohibition. Factors to consider include:
- (a) the circumstances under which the termination of their service in public office occurred;
 - (b) the general employment prospects of the public office holder or former public office holder making the application;
 - (c) the significance to the Government of information possessed by the public office holder or former public office holder by virtue of that office holder's public office;
 - (d) the desirability of a rapid transfer from the Government to private or other governmental sectors of the public office holder's or former public office holder's knowledge and skills;
 - (e) the degree to which the new employer might gain unfair commercial advantage by hiring the public office holder or former public office holder;
 - (f) the authority and influence possessed by the public office holder or former public office holder while in public office; and
 - (g) the disposition of other cases.
- (3) The decision made by the Prime Minister shall be communicated in writing to the applicant referred to in subsection (1).

EXIT ARRANGEMENTS

32. Prior to a public office holder's official separation from public office, the Ethics Counsellor shall, in order to facilitate the observance of the compliance measures set out in this Part, communicate with the public office holder to advise about post-employment requirements.

DEALINGS WITH FORMER PUBLIC OFFICE HOLDERS

Obligation to Report

- 33.(1) Public officer holders who have official dealings, other than dealings that consist of routine provision of a service to an individual, with former public office holders who are or may be governed by the measures set out in this Part, shall report those dealings to the Ethics Counsellor.
- (2) On receipt of a report under subsection (1), the Ethics Counsellor shall immediately determine whether the former public office holder is complying with the compliance measures set out in this Part.
- (3) Public office holders shall not, in respect of a transaction, have official dealings with former public office holders, who are determined pursuant to subsection (2) to be acting, in respect of that transaction, contrary to the compliance measures set out in this Part.

Schedule

AGREEMENTS

1. The following are examples of the most common agreements that may be established by public office holders for the purpose of complying with the Code:

- (a) Blind Trust

A blind trust is one in which the trustee makes all investment decisions concerning the management of the controlled assets, with no direction from or control by the public office holder who has placed the assets in trust. Assets are placed in a blind trust for the purpose of allowing investment in publicly traded securities of corporations or foreign governments.

- (b) Blind Management Agreement

A blind management agreement places the assets of the public office holder in the hands of a manager who is at arm's length from the public office holder. The manager is empowered to exercise all of the rights and privileges associated with those assets. The agreement prevents the manager from seeking or obtaining the advice of the public office holder. The public office holder cannot offer or provide advice, nor can the public office holder participate in any discussion or decision-making processes, wherever they may arise, that may particularly or significantly affect the assets that are subject to the agreement. It is only in exceptional circumstances where an extraordinary corporate event is likely to materially affect the assets, that the public office holder may personally intervene, but only after the Ethics Counsellor has been consulted and determines that the intervention would not give rise to a conflict of interest. A public declaration identifying the assets placed in the blind management agreement must also be made. The public office holder is entitled throughout the duration of the agreement to be kept informed of the basic value of the assets.

PROVISIONS COMMON TO BLIND TRUSTS

2. Provisions common to blind trusts are:

- (a) Custody of the Assets:** The assets to be placed in trust must be registered to the trustee unless these are in a RRSP account.
- (b) Power of Management or Control:** The public office holder (settlor) may not have any power of management or control over trust assets. The trustee, likewise, may not seek or accept any instruction or advice from the public office holder concerning the management or the administration of the assets.
- (c) Schedule of Assets:** The assets placed in trust shall be listed on a schedule attached to the trust agreement.
- (d) Duration of Trust:** The term of any trust is to be for as long as the public office holder who establishes the trust continues to hold an office that makes that method of divestment appropriate. A trust may be dismantled once the trust assets have been depleted.
- (e) Return of Trust Assets:** Whenever a trust agreement is dismantled, the trustee shall deliver the trust assets to the public office holder.
- (f) Information:** No information is provided to the public office holder (settlor) except information that is required by law to be filed and periodic reports on the overall value of the trust, but never its composition.
- (g) Income:** A public office holder who establishes a blind trust may receive any income earned by the trust, add or withdraw capital funds, and be informed of the aggregate value of the entrusted assets.
- (h) Trustee:** Any trustee who is appointed shall clearly be at arm's length from the public office holder and the Ethics Counsellor is to be satisfied that an arm's length

relationship exists in each case. As other criteria, any trustee must be:

- (i) a public trustee;
- (ii) a company, such as a trust company or investment company, that is public and known to be qualified in performing the duties of a trustee; or
- (iii) an individual who may perform trustee duties in the normal course of his or her work.

AGREEMENT FORMS

- 3. Acceptable blind trust and blind management agreements are available from the Ethics Counsellor. Any amendments to these agreements shall be submitted to the Ethics Counsellor before they are executed.

FILING OF AGREEMENTS

- 4. Public office holders are required to file with the Ethics Counsellor a copy of any blind trust or blind management agreement. Such agreements will be kept in the public office holder's confidential file and the Ethics Counsellor will not make them available to anyone for any purpose.

REIMBURSEMENT FOR COSTS INCURRED

- 5. On the recommendation of the Ethics Counsellor, the following reimbursements for costs to comply with the Conflict of Interest Compliance Measures set out in this Code may be permitted:

(a) Divestment of Assets

- (i) reasonable legal, accounting and transfer costs to establish and dismantle a trust or management arrangement determined to be necessary by the Ethics Counsellor;
- (ii) annual, actual and reasonable costs to maintain and administer the trust or management arrangement, following rates set from time to time by the Ethics Counsellor;
- (iii) commissions for transferring, converting or selling assets where determined necessary by the Ethics Counsellor; and
- (iv) costs of other financial, legal or accounting services required because of the complexity of arrangements for such assets.

(b) Withdrawal from Activities

Costs of removing a public office holder's name from federal or provincial registries of corporations.

6. Reimbursement is not permitted for:

- (a) charges for day-to-day operations of a business or commercial entity;
- (b) charges associated with winding down a business; or
- (c) costs for acquiring permitted assets using proceeds from required sale of other assets.

7. The public officer holder is responsible for any income tax adjustment that may result from the reimbursement of trust costs.

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PERSONAL INFORMATION STATEMENT (ON APPOINTMENT TO OFFICE)

**CONFLICT OF INTEREST
AND
POST-EMPLOYMENT**

«The information you provide on this document is collected under the authority of the Conflict of Interest and Post-Employment Code for Public Office Holders for the purpose of advising you on the conflict of interest compliance measures and will be placed in personal and confidential files and in secured safekeeping.»

NAME: _____

TITLE: _____

OR

SPOUSE/DEPENDANT OF: _____

DATE: _____

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- (i) **guaranteed investment certificates and similar financial instruments;**

- (j) **annuities and life insurance policies;**

- (k) **pension rights;**

- (l) **money owed by a previous employer, client or partnership including royalties; and**

- (m) **personal loans receivable from members of the public office holder's immediate family and small personal loans receivable from other persons.**

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B. OTHER ASSETS

Declarable Assets

N.B. The types of assets listed below normally are subject to public declaration.

1. Family business (please provide the business name, the civic address, the nature of the business and the percentage of your ownership interest).

Please list also:

- (a) co-owners
 - their names
 - their relationship to you
 - any involvement they have in government and business activities (e.g. directorships or offices in such organizations)
 - other companies controlled by the co-owners

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(b) managers of the family business

- their names
- their relationship to you
- any involvement they have in government and business activities (e.g. directorships or offices in such organizations)
- other companies controlled by the managers

(c) does the family business have any contracts with or benefits from the federal government? If yes, please describe.

YES [] NO []

(d) If the family business owns publicly traded securities, please provide the number, type, company and approximate value.

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2. Other companies of local character (please provide the company name, the civic address, the nature of the business and the percentage of your ownership interest).

Please list also:

- (a) co-owners
- their names
 - their relationship to you
 - any involvement they have in government and business activities (e.g. offices in government agencies)
 - other companies controlled by the co-owners
- (b) managers of the local business
- their names
 - their relationship to you
 - any involvement they have in government and business activities
 - other companies controlled by the managers

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(c) does the company own any publicly traded securities of other corporations ? If so, please describe the number, type, company and approximate value. YES [] NO []

(d) Does the company have any dealings with the federal government? If yes, please describe. YES [] NO []

3. Farms commercially operated (please provide the name, location, type of operation and the percentage of your ownership interest).

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Please list also:

- (a) co-owners**
- **their names**
 - **their relationship to you**
 - **any involvement they have in government and business activities**
 - **other companies or farms controlled by the co-owners**
-
- (b) managers of the farm**
- **their names**
 - **their relationship to you (e.g. family, arm's length)**
 - **any involvement they have in government and business activities**
 - **other companies or farms controlled by your managers**

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- (c) Is this land currently subject or likely to be subject to use by the federal government directly or indirectly? YES [] NO []
- (d) Any loans, loan guarantees, grants or other benefits received from the federal government? If yes, please list the approximate amounts, the type of benefits, the year received, and the source of the benefits. YES [] NO []
4. Real property other than for your personal or recreational use (please provide the location and the percentage of your ownership interest). Examples of such property are houses, apartments or commercial buildings owned by you and rented to others, or vacant land. YES [] NO []

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Please list also:

- (a) any co-owners
- their names
 - their relationship to you
 - any involvement they have with the federal government
-
- (b) who rents the property from you
- their relationship to you
 - any federal government involvement
-
- (c) To your knowledge, are there any impending or actual federal government contracts or negotiations which could affect the value of this property? If yes, please provide details. YES [] NO []

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(when completed)

5. Beneficially owned assets such as family trusts? Please provide the name of the manager or the trust company, the description of the assets and their approximate value. YES [] NO []

- (a) Please list other beneficiaries, if any, and their relationship to you.

- (b) Are you involved in any way in the administration or management of these assets? If yes, please explain your responsibilities. YES [] NO []

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6. Any loans granted by you to others? If yes, please provide: YES [] NO []

- amounts
- debtors' names
- relationship to you
- circumstances of loan
- security provided, with details

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(when completed)

C. CONTROLLED ASSETS

1. Publicly traded securities of corporations and securities of foreign governments or shares in closed end investment funds. Please provide the name of the company or the government, the number and type of securities, percentage of your controlling interest if any, and if the securities are held in escrow or as collateral. Please list all such securities owned by you in whole or in part on your appointment.

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(when completed)

2. Self-administered Registered Retirement Savings Plan (RRSP), i.e. where the assets are controlled assets, chosen and administered by you? If yes, please list: YES [] NO []

- number and type of securities and their approximate value
- name of the company or companies

N.B. If all the securities are exempt assets as defined in Section 19 of the Code, such an RRSP is an exempt asset and should be listed in the EXEMPT ASSETS section.

3. Commodities, futures and foreign currencies held or traded for speculative purposes, e.g. grain future? If yes, please give details, amounts, etc. YES [] NO []

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4. Do you currently have controlled assets placed under a trust arrangement or managed account with a trust company or investment dealer? If yes, please provide the name of the trustee or manager, the name of the firm and a description of the assets, the number, type, etc., and approximate value. YES [] NO []

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INCOME AND THE SOURCE THEREOF

Please list all sources and approximate amount of all income, including income supplements, on an annual basis, received over the last twelve months and for the forthcoming twelve months. (Please re-list previous ones under other sections, cross-referencing accordingly.)

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(when completed)

LIABILITIES

Please provide details as applicable for any liabilities you have, including lines of credit. Details are to include: amounts; institutions or individuals to whom liability is owed; any co-signors, guarantors or endorsers; their relationship to you; collateral against the liability; interest rates obtained and any other significant factors.

(a) Direct Liabilities and Other Obligations

TYPE	AMOUNT	LENDER	COLLATERAL	DEFERRED OR SPECIAL INTEREST, IF ANY
------	--------	--------	------------	--------------------------------------

(b) Contingent Liabilities (e.g. guarantees in support of loans to others)

TYPE	AMOUNT	LENDER	COLLATERAL	DEFERRED OR SPECIAL INTEREST, IF ANY
------	--------	--------	------------	--------------------------------------

N.B. Please describe any financial obligation(s) in arrears.

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(when completed)

OUTSIDE ACTIVITIES

N.B. *All activities must be disclosed, including those engaged in during the 2 year period before assuming office. Indicate whether each activity is current or past.*

(a) **Former activities requiring cessation**

Where appropriate, dates of resignation to be provided and assurance that your name has been removed from all letterheads, company registrations of directors, etc. Indicate if any of the organizations with which you were involved received, or currently receives, benefits from the federal government, such as contracts, grants or contributions.

Please indicate for each activity whether your involvement is current or past and if you receive *any* benefit.

1. Nature of previous occupation/livelihood prior to assuming office.

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2. Practice of a profession, e.g. law, medicine, accounting, engineering (please provide the type, the name of firm, the civic address and your status or your position with the firm, any current dealings or involvement). YES [] NO []
3. Management, operation of a business or commercial activity: your title, the name, the civic address and the nature of the business. Do current managers have any relationship to you (e.g. family, friends, former business associates, political associates)? YES [] NO []
4. Directorships or offices in financial or commercial corporations (please provide the title, the name of the corporation, the civic address and the nature of the business, any current dealings or involvement). YES [] NO []

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(when completed)

5. Office in a union or professional association (please provide the title, the name of the association, the civic address and nature of the association's activities). YES [] NO []
- Do you have any committee work involvement with your association (e.g. committees of Bar Associations, Accounting Associations)? If any, please describe. YES [] NO []
- Does your association make representations to the federal government? Please provide the nature, the level of representation and the government organization(s) involved. YES [] NO []

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(when completed)

6. Paid consultant work (please provide the title, the name of the firm, the civic address, the nature of the activities and the name of the client). YES [] NO []

7. Do you derive any continuing income from your former directorships or officer positions? YES [] NO []

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(when completed)

3. Executorship of a will of a person not yet deceased. If YES [] NO []
yes, please give the name of the person, relationship to
you, nature and approximate amount of the assets if
known to you.

(c) **Relationship between members of immediate family and the federal government**

Do any members of your immediate family (spouse, YES [] NO []
parents, children, or siblings) have any contracts with, or
have official dealings with the federal government? If
yes, please describe.

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(when completed)

GIFTS, HOSPITALITY OR OTHER BENEFITS

Please enumerate all that you received other than those from a family member or close personal friend. Description, the approximate value, name of the donor, relationship to you, and circumstances should be provided. Please indicate as well, the disposition of the benefit.

Gift, Hospitality, Benefit	Value	Donor/ Relationship to you	Date received	Disposition: Retained/Returned Donated to Gov't or Charity	Circumstances
---------------------------------------	--------------	---	--------------------------	---	----------------------

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(when completed)

N.B. Please report forthwith any change or addition to the foregoing disclosure and do not hesitate to call for any matter concerning your conflict of interest compliance obligations.

Date: _____ **Signature:** _____

Residential address: _____

Postal code: _____

TAB D



**Bundesrepublik Deutschland
Federal Republic of Germany
Bundesministerium der Justiz
Federal Ministry of Justice**

UNOFFICIAL ENGLISH TRANSLATION

Excerpts from the German Criminal Code

(in the version of the Act to Combat Corruption of 13 August 1997)

Sections dealing with corruption of public officials

Section 331: Acceptance of an advantage

(1) Any public official or person under a special obligation in respect of the public service who demands, allows himself to be promised or accepts an advantage for himself or a third person for performance of an official duty shall be punished by imprisonment not exceeding three years or by a fine.

(2) A judge or an arbitrator who demands, allows himself to be promised or accepts an advantage for himself or a third person in return for his having performed, or his performing in future, a judicial act shall be punished by imprisonment not exceeding five years or by a fine. An attempt shall incur criminal liability.

(3) Criminal liability shall not be incurred pursuant to Subsection 1 if the perpetrator allows himself to be promised or accepts an advantage that he has not demanded and the competent authority, acting within the scope of its powers, either previously approved acceptance or the perpetrator promptly reports it to the authority and the latter approves acceptance.

Section 332: Taking a bribe

(1) Any public official or person under a special obligation in respect of the public service who demands, allows himself to be promised or accepts an advantage for himself or a third person in return for his having performed, or his performing in future, an official act, and by so doing violates or would violate his official duties, shall be punished by imprisonment of six months to five years. In less serious

cases the sentence shall be imprisonment not exceeding three years or a fine. An attempt shall incur criminal liability.

(2) A judge or an arbitrator who demands, allows himself to be promised or accepts an advantage for himself or a third person in return for his having performed, or his performing in future, a judicial act, and by so doing violates or would violate his judicial duties, shall be punished by imprisonment of one to ten years. In less serious cases the sentence shall be imprisonment of six months to five years.

(3) If the perpetrator demands, allows himself to be promised or accepts an advantage in return for a future act, Subsections 1 and 2 shall already apply if he has indicated his willingness to the other person

1. to violate his duties in performing the act, or
2. to allow himself to be influenced by the advantage in the exercise of his discretion in a case where performance of the act is at his discretion.

Section 333: Granting an advantage

(1) Whoever offers, promises or grants, for the person concerned or a third person, an advantage to a public official, a person under a special obligation in respect of the public service or a soldier of the Federal Armed Forces for performance of an official duty shall be punished by imprisonment not exceeding three years or by a fine.

(2) Whoever offers, promises or grants an advantage to a judge or an arbitrator, for the judge or the arbitrator concerned or a third person, in return for his having performed, or his performing in future, a judicial act shall be punished by imprisonment not exceeding five years or by a fine.

(3) Criminal liability shall not be incurred pursuant to Subsection 1 if the competent authority, acting within the scope of its powers, either previously approved acceptance of the advantage by the recipient or approves acceptance following a prompt report thereon by the recipient.

Section 334: Offering a bribe

(1) Whoever offers, promises or grants, for the person concerned or a third person, an advantage to a public official, a person under a special obligation in respect of the public service or a soldier of the Federal Armed Forces in return for his having performed, or his performing in future, an official act, so that the person concerned has violated, or would violate, his official duties, shall be punished by imprisonment of three months to five years. In less serious cases the sentence shall be imprisonment not exceeding two years or a fine.

(2) Whoever offers, promises or grants a judge or an arbitrator an advantage, for the judge or the arbitrator concerned or a third person, in return for

1. his having performed a judicial act, thereby violating his judicial duties, or
 2. his performing a judicial act in future, so that he would violate his judicial duties
- shall be punished in the cases referred to in number 1 with imprisonment of three months to five years, and in the cases referred to in number 2, with imprisonment of six months to five years. An attempt shall incur criminal liability.

(3) Where the perpetrator offers, promises or grants the advantage in return for a future act, Subsections 1 and 2 shall already apply if he attempts to make the other person

1. violate his duties in performing the act, or
2. allow himself to be influenced by the advantage in the exercise of his discretion in a case where performance of the act is at his discretion.

Section 335: Particularly serious cases of Taking a bribe and Offering a bribe

(1) In particularly serious cases

1. an offence pursuant to
 - a) Section 332 Subsection 1, first sentence, also in conjunction with Subsection 3, and
 - b) Section 334 Subsection 1, first sentence, and Subsection 2, in each case also in conjunction with Subsection 3, the sentence shall be imprisonment of one to ten years, and

2. an offence pursuant to Subsection 332 Subsection 2, also in conjunction with Subsection 3, the sentence shall be imprisonment of not less than two years.

(2) A particularly serious case within the meaning of Subsection 1 shall, as a rule, be deemed to exist if

1. the offence relates to an advantage on a large scale,
2. the perpetrator recurrently accepts advantages that he has demanded in return for his performing an official act in the future, or
3. the perpetrator acts commercially or as a member of a gang that has come together for recurrent commission of such offences.

Section 336: Omission to perform the official act

Omission to perform an official act or a judicial act shall be deemed equivalent to performance of an official act or a judicial act within the meaning of Sections 331 to 335.

Section 337: Remuneration of arbitrators

Remuneration of an arbitrator shall only be deemed an advantage within the meaning of Sections 331 to 335 if the arbitrator demands, allows himself to be promised or accepts it from one party behind the back of the other or if it is offered, promised or granted to the arbitrator by one party behind the back of the other.

Section 338: Property fine and Extended forfeiture

(1) Section 73d shall be applied in the cases referred to in Section 332, also in conjunction with Sections 336 and 337, if the perpetrator acts commercially or as a member of a gang that has come together for recurrent commission of such offences.

(2) Sections 43a and 73d shall be applied in the cases referred to in Section 334, also in conjunction with Sections 336 and 337, if the perpetrator acts as a member of a gang that has come together for recurrent commission of such offences. Section 73d shall also be applied if the perpetrator acts commercially.

Section 11: Persons and definitions

(1) Within the meaning of this Code, the following shall be deemed to be

[...]

2. a public official:

any person who, under German law,

- a) is a civil servant or judge,
- b) exercises some other official capacity under public law, or
- c) has otherwise been appointed to carry out functions of public administration with an authority or other agency, or on its behalf, irrespective of the organisational form selected to carry out the functions;

3. a judge:

any person who, under German law, is a professional or honorary judge;

4. a person specially entrusted with public service functions:

any person who, without being a public official, is employed by, or works for,

- a) an authority or other agency exercising functions of public administration, or
- b) an organisation or other association, operating unit or enterprise carrying out functions of public administration for an authority or other agency, and is formally obliged by statute to fulfil his/her duties conscientiously;

[...]

Section dealing with money laundering

Section 261: Money laundering; disguising of illegal property

(1) From three months' to five years' imprisonment or a fine shall be imposed on any person who conceals or disguises the origin of an item which derives from an illegal act specified in the second sentence, committed by another, or who prevents or places in jeopardy the detection of the origin, the location, forfeiture, confiscation or seizure of such an object. Illegal acts in the meaning of the first sentence shall be:

1. major crimes,
 2. minor crimes pursuant to
 - a) section 332 subsection 1, also in conjunction with subsection 3, and section 334,
 - b) section 29 subsection 1 first sentence No. 1 of the Narcotics Act (Betäubungsmittelgesetz) and section 29 subsection 1 No. 1 of the Commodities Control Act (Grundstoffüberwachungsgesetz).
 3. minor crimes pursuant to section 373 and, if the offender acts on a commercial basis, pursuant to section 374 of the Tax Code (Abgabenordnung), in each case in conjunction with section 12 subsection 1 of the Act to Implement the Common Market Organisations (Gesetz zur Durchführung der Gemeinsamen Marktorganisationen)
 4. minor crimes
 - a) pursuant to sections 190 b, 181 a, 242, 248, 253, 259, 263 to 264, 266, 267, 269, 284, 326 subsections 1, 2 and 4, as well as section 328 subsection 1, 2 and 4,
 - b) pursuant to section 92 a of the Act on Aliens (Ausländergesetz) and section 84 of the Asylum Procedure Act (Asylverfahrensgesetz), committed on a commercial basis by a member of a gang formed for recurrent commission of such offences, as well as
 5. minor crimes committed by a member of a criminal association (section 129).
- In cases falling under the second sentence No. 3, the first sentence shall also apply to an item which has been the subject of tax evasion.

(2) The same punishment shall be imposed on any person who, in respect of the item referred to in subsection 1,

1. acquires such item for himself or herself or for a third person, or
2. possesses or uses such item for himself or herself or for a third person, knowing at the time of receipt the origin of such item.

(3) The attempt shall be punishable.

(4) In particularly serious cases the punishment shall be imprisonment from six months to ten years. A particularly serious case shall generally be one in which the offender acts on a commercial basis or as a member of a gang formed for recurrent commission of money laundering.

(5) Whoever in the cases falling under subsection 1 or 2 recklessly fails to realise that the item derives from an unlawful act as specified in subsection 1, shall be punished by imprisonment of up to two years or a fine.

(6) The offence shall not be punishable under subsection 2 if a third person has previously acquired the item without committing a criminal offence in doing so.

(7) Items to which the criminal offence relates may be confiscated. Section 74 a shall be applicable. Sections 43 a and 73 d shall be applied if the offender acts as a member of a gang formed for recurrent commission of money laundering. Section 73 d shall also be applied if the offender acts on a commercial basis.

(8) The items referred to in subsections 1, 2 and 5 shall be on an equal footing with items deriving from offences committed abroad of the nature specified in subsection 1, provided the offence is punishable at the place of commission as well.

(9) Punishment under subsections 1 to 5 shall not be imposed on any person who

1. voluntarily reports the offence to the competent authority, or arranges voluntarily for such a report to be made, provided that the offence had not yet been discovered at this time, wholly or in part, and the offender was aware of this, or on reasonable consideration of the facts must have anticipated this, and
2. in the cases falling under subsection 1 or 2 under the conditions referred to in No. 1 causes the item to which the criminal offence relates to be seized.

Punishment under subsections 1 to 5 shall not be imposed on any person who is punishable in respect of the predicate offence.

(10) The court may at its discretion mitigate punishment (section 49 subsection 2) in the cases falling under subsection 1 to 5 or dispense with punishment under these provisions if the offender by voluntarily disclosing his or her knowledge has substantially helped to make it possible for the offence, or an unlawful act of another, as specified in subsection 1, to be detected, going beyond his or her own contribution thereto.

Sections dealing with corruption of Members of Parliament

Section 105e: Bribery of a Member of Parliament

(1) Whoever undertakes to buy or sell a vote for an election or ballot in the European Parliament or in a representative body of the Federation, of the Länder, of the municipalities or associations of municipalities shall be punished with imprisonment not exceeding five years or with a fine.

(2) In addition to imposing a sentence of imprisonment for a criminal offence under Subsection 1 the court may deprive the convicted offender of the capacity to acquire rights ensuing from public elections and of the right to vote or cast a ballot in public matters.

Sections dealing with Corruption in the private sector

Section 299: Taking a bribe and Offering a bribe in the course of commercial activity

(1) Whoever, as an employee or agent of a commercial enterprise, in the course of commercial activity, demands, allows himself to be promised or accepts any advantage for himself or a third person in return for his giving, in an unfair manner, preference to another in the acquisition, in competition, of goods or commercial services shall be punished by imprisonment not exceeding three years or by a fine.

(2) The same sentence shall apply to whoever, in the course of commercial activity and for the purposes of competition, offers, promises or grants an advantage to an employee or agent of a commercial enterprise or to a third person in return for his giving, in an unfair manner, preference to him or to another in the acquisition of goods or commercial services.

Section 300: Particularly serious cases of Taking a bribe and Offering a bribe in the course of commercial activity

(1) In particularly serious cases the sentence for an offence pursuant to Section 299 shall be imprisonment from three months to five years. A particularly serious case shall, as a rule, be deemed to exist if

1. the offence relates to an advantage on a large scale, or
2. the perpetrator acts commercially or as a member of a gang that has come together for recurrent commission of such offences.

Section 301: Application for criminal prosecution

(1) Taking a bribe and offering a bribe in the course of commercial activity pursuant to Section 299 shall only be prosecuted upon application being made, unless the prosecuting authority deems an officio intervention to be required in view of the particular public interest in criminal prosecution.

(2) Besides the victim, any person engaged in commerce, any association and any chamber referred to in Section 13 Subsection 2 numbers 1, 2 and 4 of the Act Against Unfair Competition shall have the right to make an application for criminal prosecution pursuant to Subsection 1.

Section 302: Property fine and Extended forfeiture

(1) Section 73d shall be applied in the cases referred to in Section 299 Subsection 1 if the perpetrator acts commercially or as a member of a gang that has come together for recurrent commission of such offences.

(2) Sections 43a and 73d shall be applied in the cases referred to in Section 299 Subsection 2 if the perpetrator acts as a member of a gang that has come together for recurrent commission of such offences. Section 73d shall also be applied if the perpetrator acts commercially.

Sections dealing with jurisdiction

Section 3: Offences committed in Germany

German criminal law shall apply to offences committed in Germany

Section 4: Applicability to offences committed on German vessels and aircraft

German criminal law shall apply, regardless of the law of the place of commission, to offences committed on a vessel or an aircraft authorised to fly the Federal flag or display the nationality mark of the Federal Republic of Germany.

Section 5: Offences committed abroad against domestic legal interests

German criminal law shall apply, regardless of the law of the place of commission, to the following offences committed abroad:

- ...
12. offences committed by a German public official or by a person under a special obligation in respect of the public service while on duty or in connection with his duties;
- 13. offences committed by a foreigner acting as a public official or as a person under a special obligation in respect of the public service.
- ...

Section 7: Applicability to offences committed abroad in other cases

(1) German criminal law shall apply to offences committed abroad against a German if the offence attracts criminal liability at the place of commission or if such place is not subject to any criminal jurisdiction.

(2) German criminal law shall apply to other offences committed abroad if the offence attracts criminal liability at the place of commission or if such place is not subject to any criminal jurisdiction and if the perpetrator

- 1. was a German at the time of the offence or became one subsequently, or
- 2. was an alien at the time of the offence, was found inside Germany and, although the Aliens Act would permit his extradition for the type of offence involved, has not been extradited because a request was not made for extradition, or was refused, or because extradition cannot be executed.

Extended Forfeiture

Section 73d: Extended Forfeiture

(1) If an unlawful act has been committed in violation of a law that refers to this provision, the court shall also order forfeiture of objects of the perpetrator or accessory if circumstances justify the assumption that such objects have been obtained for or from unlawful acts. The first sentence above shall also apply if the sole reason why the object does not belong or appertain to the perpetrator or accessory is that he obtained it for or from an unlawful act. Section 73, subsection (2), shall apply *mutatis mutandis*.

(2) If, after the act, forfeiture of a particular object has become wholly or partially impossible, sections 73a and 73b shall apply analogously.

(3) If, after forfeiture has been ordered pursuant to subsection (1) above, a new decision is to be taken on forfeiture of objects of the perpetrator or accessory because of another unlawful act that the perpetrator or accessory committed prior to the order, the court shall take into account the order previously made.

(4) Section 73c shall apply *mutatis mutandis*.

TAB E



Bundesrepublik Deutschland
Federal Republic of Germany
Bundesministerium des Innern
Federal Ministry of the Interior

Bonn, 26 October 1998

Subj.: Prevention of corruption

On 17 June 1998, the Federal Government adopted a

***Federal Government Directive concerning the Prevention of
Corruption in the Federal Administration.***

**This directive entered into force with its publication in the Federal
Gazette on 14 July 1998.**

**The directive requires all federal agencies to take the anti-corruption
measures provided in the directive.**

**On the following pages you will find the English translation of the
directive.**

Translation

**Federal Government Directive
concerning the Prevention of Corruption
in the Federal Administration**

of 17 June 1998

The present Directive is adopted under Article 86 sentence 1 of the Basic Law:

1. Scope

The measures taken by all government offices for the prevention of corruption are governed by the present Directive; deemed government offices for this purpose are the supreme federal authorities, authorities of direct and indirect federal administration, the federal courts, the federal special funds and institutional beneficiaries supported predominantly by the Federation. Account shall be taken of any special characteristics of these offices connected with their organisation and specific tasks.

2. Identifying sensitive fields of activity; Risk analysis; Work routines

Sensitive and particularly sensitive fields of activities, that is fields that are vulnerable and particularly vulnerable to corruption, shall be identified in all government offices.

Whether to carry out risk analysis in particularly sensitive areas shall be carefully considered. Work routines shall be adapted in line with the risk analysis findings.

3. Greater scrutiny and transparency

Greater scrutiny shall be ensured in sensitive areas of activity through the involvement of more staff or organisational units in second checks. If this is not possible owing to legal provisions or to insuperable practical difficulties, the system of second checks may be restricted to random checks or, by way of compensation, other precautionary measures (e.g. more intensive administrative and substantive supervision) shall be envisaged.

Additionally, transparent decision-making shall be ensured (e.g. by clearly assigning competencies, by a reporting system, IT-based monitoring of transactions and operations, complete and accurate documentation [minutes, notes, reports, proper records]).

4. Rotation of staff

The precautionary measure of staff rotation shall be the aim in particularly sensitive areas and in the channels overseeing these areas.

As a general rule, the term of office shall be specified. Where the term is extended for compelling reasons, these reasons shall be placed on record and other preventive action taken by way of compensation.

5. Contact person for the prevention of corruption

Contact persons for the prevention of corruption shall be appointed, their number depending on the tasks and size of the offices concerned. One such person may be responsible for several offices. Contact persons may be charged with the following tasks:

- Acting as a point of contact, someone with whom staff, private individuals and office management can talk, without going through the official channels, if need be;
- advising office management, and advising and informing staff (e.g. in seminars and presentations);
- looking out for signs of corruption;

submitting proposals to office management on internal investigations, on anti-collusion measures and on informing the public prosecutor's office upon suspicion of corruption warranted by facts;
- assisting in public relations by publishing sanctions as imposed under civil service and criminal law, heeding the right to privacy of the persons concerned in doing so (preventive aspect).

If a contact person becomes aware of facts warranting the suspicion of a disciplinary offence by a civil servant (Section 26 (1) sentence 1 of the Federal

Disciplinary Code), they shall inform office management who shall initiate the investigations required to clear up the matter. No disciplinary powers according to Section 15 (1) of the Federal Disciplinary Code may be conferred on contact persons; they may not act as preliminary investigators, nor may they head investigations in any disciplinary proceedings on account of corruption. The given office shall provide the contact person promptly and comprehensively with the necessary information to enable them to carry out their duties, in particular in incidents in which corruption is suspected. Contact persons shall maintain silence about the personal circumstances of staff that have become known to them, even after completion of their term of office; this shall not apply in relation to office management and staff management when there is any suspicion of corruption that is warranted by facts.

6. Internal review

Office management shall charge an organisational unit with carrying out internal reviews, for a limited period or on a permanent basis, whenever risk analysis findings or special occasions require such; the staff in such units shall be given suitable training for this task. The object of internal reviews is the random checking and monitoring of current and completed transactions and operations and of decisions taken. In the event of flaws in corruption prevention it shall recommend suitable changes to the organisation section and the organisational unit concerned.

Under internal reviews, office management and the contact person for corruption prevention shall be informed accordingly upon any suspicion of corruption.

7. Selection of staff

Special care shall be taken in appointing staff to sensitive organisational units.

8. Alerting and informing staff

Staff shall be made aware of the risk of corruption when they take their oath of office or are placed under obligation, and instructed of the consequences of corrupt behaviour. In addition, staff shall be given a generally valid *Code of Conduct* enabling them to respond appropriately to any incidents in which corruption is suspected to have occurred.

9. Training

All basic and further training schemes shall be examined with a view to establishing whether participants have been adequately informed of corruption in all its manifestations, of risk situations, of corruption prevention measures and of the consequences - in terms of criminal law, civil service law and labour law - arising in cases of corruption.

10. Systematic administrative and substantive supervision

Superiors shall be systematic in the exercise of their administrative and substantive supervision and look out for any signs of corruption. They shall regularly alert their staff to the risk of corruption.

11. Full-time investigators

In order to accelerate disciplinary proceedings, the highest administrative authorities may appoint full-time investigators for one or more offices.

12. Notification and action upon suspicion of corruption

Where there is suspicion, warranted by facts, of a criminal offence involving corruption (most notably Sections 331 to 338 of the Criminal Code), office management shall notify the public prosecutor's office and the highest administrative authority without delay; furthermore, internal investigations shall be started and preventive action taken against any collusion to conceal the facts.

13. Separation of planning, award and billing

In connection with the procurement of public works, supplies and services within the meaning of the German Code for Awarding Public Works Contracts (*VOB*), the German Code for Awarding Public Services Contracts (*VOL*) and the German Code for Awarding Contracts for Professional Services (*VOF*) preparation, planning and specification of requirements on the one hand and implementation of the award procedure on the other should be entrusted in principle to separate organisational units. Billing for construction work performed should be the responsibility of a third organisational unit.

14. Principle of public tender

The provisions of the German Codes for Awarding Public Works Contracts, Public Services Contracts and Contracts for Professional Services relating to contract award shall be strictly adhered to in the interest of preventing corruption.

The office concerned shall ensure that the reasons justifying any divergence from the norm of public tender or open procedure are placed on record in each given instance (Sections 3, 3 a and 30 of the *VOB/A* and *VOLA* respectively and Section 18 of the *VOF*); in respect of public contracts worth more than the amount set forth in Section 3 no 4 sub-paragraph p of the *VOLA* the reasons shall be examined by a superior or by an organisational unit not taking part in the actual procurement.

Public procurement shall be regularly monitored for inadmissible influencing factors as part of supervisory and substantive supervision.

15. Exclusion of companies from participation in the competition

Offices shall investigate whether a bidder or candidate is guilty of any serious misconduct which compromises their reliability and which may lead to exclusion from participation in the competition (Section 8 of the *VOB/A*, Section 7 of the *VOLA* and Section 11 of the *VOF*).

A bidder or candidate is deemed guilty of such serious misconduct most notably when they are proven to have offered, promised or granted an advantage to a member of staff of an office engaged in the preparation or implementation of the award procedure or to a third party. In their investigation, offices shall apply the federal government decision on the uniform application of the rules concerning the exclusion of unreliable companies from public contracts and on the introduction of a register for companies with proven unreliability.

16. Anti-corruption clause

In suitable cases, anti-corruption clauses shall be incorporated in contracts on the purchase of public works, services or other supplies and services which, in the event of conduct justifying the exclusion of the contractor from participation in the competition under Section 7 no 5 sub-paragraph c of the VOL/A, Section 8 no 5 para 1 sub-paragraph c of the VOB/A or Section 11 sub-paragraph c of the VOF and leading to a substantial disadvantage for the contracting entity, provide for payment by the contractor of a reasonable contractual penalty according to Section 11 of the VOB/B or VOL/B.

17. Placing contractors under an obligation as provided for by the Act on the Engagement of Persons placed under an Obligation

Where private companies (e.g. main contractors, architects' or engineering consultants' offices) assist in the discharge of public functions, the individual members of staff of these companies - where appropriate - shall undertake in accordance with Section 1 (1) of the said Act to conscientiously perform the duties incumbent upon them arising from the contract. They shall be given a copy of the directive concerning prohibition of the acceptance of rewards or gifts and shall acknowledge receipt of the same.

18. Gifts and hospitality for events and facilities; Sponsoring

The prior consent of the highest administrative authority shall be obtained for the acceptance of any gifts or hospitality from third parties outside the office concerned for staff events or facilities. This shall also apply to any voluntary material promotion (sponsoring) for the benefit of activities, events and facilities of the office concerned.

19. Special measures

If the particular circumstances of any office require additional arrangements for the prevention of corruption, it shall notify the highest administrative authority through the official channels of all measures taken.

20. Recipients of subsidies

Where government offices give subsidies to offices outside the federal administration for purposes of promoting these offices, they shall oblige the recipients to apply this Directive when they require the recipient to apply the *VOL/A* and *VOB/A* in accordance with the provisional administrative rules pertaining to Section 44 of the federal budgetary regulations.

21. Entry into force

The present Directive shall enter into force on the day of its promulgation in the Federal Gazette.^{*)}

^{*)} The Directive was promulgated in the Federal Gazette on 14 July 1998.

TAB F

The Law of Georgia on Special Anti-Corruption Service

Chapter 1

General Provisions

DRAFT

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Article 1. The Special Anti-Corruption Service

The Special Anti-Corruption Service (hereinafter referred to as the Service) is the special law enforcement state agency within the executive branch, belonging to the governmental agencies determined in article 23 of the law of Georgia on "The Structure and Activities of the Executive Government." It performs its activities according to this law and the legislation of Georgia.

Article 2. The Goals of the Service

1. In order to avoid corruption, and to reveal and prevent such cases, the goals of the Service are:
 - a) to analyze, forecast, and reveal the reasons and conditions of corruption
 - b) to inquire into the corruption cases, that do not constitute crimes or administrative law violations and are committed by the officials listed in "c" paragraph of this article.
 - c) to conduct operative-investigative activities, inquiry, and preliminary investigation on those cases of corruption that are prepared and committed by the following officials: the President of Georgia, the member of Parliament, the Chairmen, Deputies and Members of the Supreme and Constitutional Courts, the State Minister of Georgia, The Ministers and their Deputies, the Prosecutor General of Georgia, the First Deputy and Deputies Prosecutor General, the Chairman and Deputy Chairman of the Chamber of Control, the President and Members of the Council of National Bank of Georgia, the Ombudsman and his/her Deputy, the Member of the Council of Justice of Georgia, the Chairman, Deputy Chairman and Secretary of the Central Election Commission, The State Trustee of the President of Georgia and his/her Deputy, the Assistant of the President of Georgia, The Heads and Deputy Heads of Bureaus, Departments, and Main Institutions of the Ministries of Georgia, the Members of the Highest Representative Agencies and members of the Government of the Autonomous Republics of Abkhazia and Adjara, the Ambassador, Counselor of Georgia, the Mayors of the following Cities-Tbilisi, Kutaisi, Batumi, Sokhumi, Poti, Tskinali, Rustavi, the Rectors, the Chairpersons of the State Exam Commission of the High State Educational Institutions, the Heads of District, Regional Departments of the Ministry of Internal Affairs and the State Security, the Judges of Georgia, Tbilisi District, Military Regional and Transport Prosecutors, the Regional (City) Prosecutors and the Prosecutors of the Judgment Execution Institutions, the Governors of the Regions, the Heads of the Isolators of the Preliminary Custody, Investigation and Penitential Institutions.

Article 3. Publicity of the Service Work

The consulting agency is created within the authority of the President of Georgia with the participation of the Parliament, Government of Georgia, press and the public representatives in order to determine main directions of the anti-corruption policy, to control the activities of such service and to provide publicity. The President of Georgia approves the provision concerning the rules of formation, forms of activity and authority of this agency.

Article 4. The General Principles of the Service Activities

The principles of the Service activities are:

- a) legitimacy
- b) protection and respect of the rights and freedoms of natural persons and protection of the rights of legal entities
- c) objectivity and impartiality
- d) political neutrality

Article 5. The Legal Bases for the Service Activities

The legal bases for the activities of the Service are the Constitution of Georgia, International Treaties, this Law, and Legislation of Georgia.

Article 6. International Obligations of the Service

The Service, within its competence, makes decisions, which arise under the international treaties of Georgia.

Chapter II**The Activities of the Service****Article 7. The Main Directions of the Service Activities**

1. In order to avoid corruption, to reveal the reasons and to prevent such cases the Service
 - a) conducts operative-investigative activities, inquiry and preliminary investigation into corruption cases according to the Criminal Procedural Code of Georgia and other laws;
 - b) receives and reviews applications, claims and addresses of the legal entities and natural persons according to the legislation of Georgia;
 - c) conducts inquiry into government officials' activities and presents the results to the President of Georgia and political officials and administrators;

- d) controls the rule of work of the material-technical department of the executive branch, the Parliament of Georgia, the State Chancellery, the apparatus of the Council of Justice of Georgia, and the Courts of General Jurisdiction;
 - e) submits the nominations to the political officials and administrators, who are responsible to inform the service within 10 days about the measures implemented concerning the nomination;
 - f) informs the President of Georgia and (or) a person who has the right to adopt a legal rule about the changes in the legislation of Georgia;
 - g) submits the information to the President of Georgia or the Ministry of Foreign Affairs, in a case if the latter acknowledges as mandatory the international treaties of Georgia, concerning the termination or suspension of the international treaties of Georgia
 - h) makes analyses concerning the state and social processes
2. The Service according to the rule conducts inquiry and preliminary investigation on those criminal cases, which are subject to subordinated investigation according to the Criminal Procedural Code of Georgia. According to this the Service:
- a) implements operative-investigative activities in accordance with existing law, among them hidden video and audio surveillance, photography, observation, electronic control, and unlimited access to postal communication techniques (telegraph, fax, telex, radio communication), eavesdropping;
 - b) within its competence implements the activities concerning the search and arrest of a suspected person according to the established law;
 - c) provides self security and defense of the communication means;
 - d) receives and registers information of those crimes which are within its investigative competence;
 - e) can use the means of communication of any state organizations, enterprises, and institutions or public unions and citizens when it is of urgent necessity. The Service is responsible to reimburse expenses of the owners of the communication means;
 - f) can use the transport means owned by citizens, enterprises, organizations, institutions and public unions (except the transport means owned by a person with diplomatic immunity) when it is of urgent necessity- such as to visit a crime scene, to prevent a crime, or arrest of a suspected person. The Service is responsible for reimbursing the expenses and damage of the owners of transport means.

- g) to enter a building, flat, institution, enterprise, or organization (except the buildings with diplomatic immunity), any time without the neighbors' permission (in urgent cases to use physical force) in the aim of preventing a crime, or to arrest a suspected person, and is obliged to inform the court about this within 24 hours.
- h) receives free information from the enterprise, organization and citizen, except in those cases when special rules are established concerning the receipt of the information.
- i) has the right to stop the railway, marine, and air transport for not more than 30 minutes in the aim of arresting the suspected or accused person.

Chapter III

The Right to use Physical Force, Special Means, Fire Arms

Article 8. The Right of a Service Administrator to use Physical Force, Special Means, and Fire Arms

1. The Service administrator has the right to use physical force, special means and fire arms during the implementation of work duties in the cases determined by this Law and established rules.
2. The Service administrator is obliged to inform a person about using the physical force, special means, and fire arm, to provide sufficient time for him/her to implement the legal requirements of the Service administrator, except when delay of such action may cause death or damage to the health of a person or the Service administrator, other serious damage, or when it is impossible to provide notice to a person.
3. The form of special means and physical force is determined by the concrete case, the character of law infringement and individual feature of law infringement.

Article 9. The Right to use Physical Force

The Service administrator has the right to use physical force, including special methods of combat in the aim of providing security of a person, to prevent a crime, or to arrest a suspected or accused person, if the service administrator cannot implement his/her duties without using force.

Article 10. The Right to use Special Means

1. The service administrator has the right to use special means during the implementation of his/her duties: handcuffs and other means of iron, tear gas, special means of light and sound, means to stop transport, means of transport, means to overcome obstacles, following technical means of individual control:
 - a) handcuffs and other means of iron can be used on a person who committed a crime, who tries to escape or resist;

- b) tear gas can be used to prevent assault on a person, service administrator, or other employee who is the subject of security, during the arrest of a person who committed a crime, or to force a criminal to leave transport or building, where he/she is hidden;
 - c) special means of light and sound can be used to prevent assault on a person, service administrator, or other employee or to arrest an armed person, or forcefully to make a criminal leave a building, transport, or plot;
 - d) special means to stop transport can be used in a case to stop forcefully a transport if a driver did not carry out the order of the service administrator to stop a transport;
 - e) means of overcoming of obstacles can be used during the arrest of a criminal;
2. The service administrator is obliged to provide medical aid to a person who was injured by physical force or special means, and to inform the direct supervisor and a prosecutor, if a person was wounded or injured by the use of physical force or special means.
 3. The use of physical force or special means toward pregnant women, minors, disabled, or aged persons is prohibited, except when they conduct armed assault on a service administrator or other employee which is dangerous for the life and health of a person, a service administrator, or other employee, and there is not any other means to prevent such case.
 4. A service administrator cannot use special means or physical abuse, which causes serious damage to a person; when it would involve risk, or be prohibited by the international conventions and other international acts.
 5. The rules concerning keeping, carrying, and using special means by the service administrator are established by Georgian legislation, this law, the normative acts passed by the President of Georgia and the Service.
 6. The Service, within the competence established by this law and other laws of Georgia, creates and uses operative-technical means and provisions to defend them.
 7. The operative-technical means and methods used by the Service should not create danger for health and life of a person, and should not damage the environment.
 8. The operative-technical means can be used according to the rule established by the legislation of Georgia.

Article 11. The Right to use Fire Arms

1. The service administrator has the right to keep, carry, and use fire arms during the implementation of his/her duties.
2. The rules concerning keeping and carrying fire arms by the Service administrator are established by the legislation of Georgia and Service normative acts.

3. The service administrator has the right to use fire arms in cases of emergency :
 - a) in a case where there is real danger to the life and health of a person or a service administrator
 - b) to prevent someone from forcibly removing his/her fire arm
 - c) to prevent the case of escape from prison or detention places
 - d) to prevent the cases of violence, also during the arrest of a criminal who tries to escape
 - e) to prevent the assault on a subject who is protected by the Service
 - f) in a case when there is a necessity of additional power
 - g) to damage transport in the aim to stop it, if the action of a driver creates a danger to the health and life of a person and a driver does not obey the demand of a service administrator to stop the transport
4. The use of a fire arms should be preceded by a warning, in an emergency case it should be preceded by a warning shot. This rule applies when a criminal attempts to escape by car, from transport, or in a forest.
5. The fire arm can be used without a warning shot in the following cases:
 - a) during the unexpected assault by military equipment, any kind of transport or mechanical means;
 - b) if a criminal uses arms during his/her arrest;
6. The use of fire arms is prohibited in places where other people may be injured, in explosively dangerous places, or toward pregnant women, minors, disabled, and aged people, except if they conduct armed assault, which creates danger to the health and life of a service administrator, or an employee, or other person.
7. The Service administrator during the use of a fire arm is obliged to try his/her best to provide security of the people and give medical aid to an injured person.
8. The Service administrator is obliged to inform his/her direct supervisor and a prosecutor about the usage of a fire arms.
9. The President of Georgia approves the list of the Service fire arms.
10. The use of such fire arms or military equipment which involves great risk or is prohibited by international conventions and international acts is forbidden.

Chapter IV

The Organization and Composition of the Service

Article 12. The Organizational Structure of the Service

1. There are following organizational structures of the Service:
 - a) investigative department
 - b) the department of inquiry and operative-investigation
 - c) inquiry department
 - d) the department of analysis with the data bank
 - e) medical-technical department
 - f) temporary detention jail and investigative isolator
 - g) staff department with the inspection of the Service, also other structural units determined by the Service provisions.
2. The head of the service manages the service and he/she has deputies.
3. There are established the following list of positions within the investigative department, and the departments of inquiry and operative-investigation:
 - a) the head of the department
 - b) senior investigator of the most important cases and the investigator of the most important cases;
 - c) senior inspector of the most important cases, inspector of the most important cases and inspector.
4. The other positions of the service employees are determined by the provision of the Service
5. Other issues concerning the organizational structure of the Service which are not discussed in this law are determined by the provision of the Service according to the Georgian legislation and is approved by the President of Georgia.

Article 13. Head of the Service

1. The President of Georgia under the consent of the Parliament of Georgia appoints a head of the Service for a 5 year term and dismisses him.
2. A head of the Service:

- a) organizes and leads the activity of the Service under the rule established by the law and represents the Service in relations with other legal and natural persons;
- b) with the consent of the President appoints and dismisses the heads of structural subdivisions of the Service and other administrators provided by provisions. And within the framework of his competence appoints and dismisses the advisors and technical personnel of the Service;
- c) works out proposals on financing the Service and its material-technical provision;
- d) gives orders and directions within the framework of his competence on the basis of law and for its implementation;
- e) receives and reviews the letters, complaints and addresses of citizens and receives them;
- f) if the case is determined by law gives written consent on the actions of Service administrators;
- g) presents information on the activity of the Service to the Parliament once a year;
- h) is authorized to attend the sessions of the Parliament, its committees and commissions and those of government; also he is authorized to apply to the Parliament, its committees and commissions and the government with request to hear his information;
- i) appoints and dismisses members of scientific-consultation council;
- j) implements other authorities pursuant to the legislation;

Article 14. Deputy Head of the Service

1. The President of Georgia appoints and dismisses a deputy head of the service under the nomination of a head of the service.
2. Functions and authority of the deputy head of the service is defined by this law and the provisions of the service.
3. In case of absence of the head of the service, or his inability to implement his authority, deputy head of the service performs his functions.

Article 15. Seal of the Service, Identity Card of an Employee and Distinctive Things

1. The Service has a round seal with the state arms of Georgia on it and the full name of the Service.
2. The President of Georgia gives the identity card of a fixed sample to the head of the Service.

3. A head of the Service gives identity card to other administrators and employees of the Service.
4. The Service administrators wear clothes of fixed sample form.
5. The Service administrator, who has been given a special title, wears distinctive symbols on the uniform established under the rule.

Chapter V

Work Inquiry, Operative-investigative Activity, Inquiry and Preliminary Investigation

Article 16. Work Inquiry and Its Frames

Work inquiry is carried out in case of the corruptive legal violations, which do not include administrative legal violations or crimes.

Article 17. To Commence Work Inquiry

1. The reasons for work inquiry are the data found by natural or legal persons and those received from mass media and also gathered by the service, if they include the data on corruptive law violation, which do not represent administrative violations and crimes.
2. Anonymous notes shall not be considered a reason for proceeding work inquiry.
3. A head of the service or a corresponding administrator under the consent of the head is authorized to commence work inquiry.
4. In case of commencement of work inquiry, a head of the service or a corresponding administrator under the consent of the head, issues a decree, which covers the following issues:
 - a) reason for commencing work inquiry;
 - b) legal rule, in case of violation of which, commencement of work inquiry is implemented;
 - c) person(s) responsible for commencing work inquiry.

Article 18. Request for Information

1. Concerning the question to be discussed, a corresponding administrator of the service has the right to require written materials and information from any public administrator or treasury organization.
2. Requiring and getting familiarized with the materials and information including state secrets is carried out in accordance with the legislation of Georgia.

3. Relevant public administrator or treasury organization is obliged to provide the public administrator with the required information and materials within the term fixed by the service, but if it is not fixed by the Service itself, then in a month period from receiving the request.

Article 19. Interrogation

1. Relevant administrator of the Service enjoys the right to interrogate any natural person on this or that condition connected with the question to be discussed.
2. It is inadmissible to:
 - a) interrogate a member of the Parliament on the fact he was entrusted to know, as a member of the Parliament;
 - b) interrogate a public defender on the fact he was entrusted to know, as a public defender;
 - c) interrogate a judge on a specific court case;
 - d) interrogate a cleric on the conditions kept secure and secret under penitence.
 - e) interrogate other people provided by law;
3. Prior to interrogation a person to be interrogated must be warned about the consequences of refusing or avoiding to provide information and also in case of providing others with false information deliberately. It is noted in the inquiry protocol and is confirmed with the signature of the person to be interrogated.
4. Interrogation of a person under full age shall be attended by his legal representative.
5. If a person to be interrogated does not know a State language, an interpreter must be provided. In case of interrogation of a mute or a deaf person, a person shall be invited, who knows his communication characteristics. If the interpreter or the person who knows the communication characteristics of a deaf or a mute person deliberately interprets a statement inaccurately, he or she will be held responsible under the rule derived from legislation.
6. A protocol on conducting interrogation is made under the signature of the administrator (administrators) of the Service, who has conducted the interrogation or that of the interrogated person.
7. The position and name of a person who conducts an interrogation and the name, citizenship, date of birth, place of residence, work place, activity and position of a person to be interrogated are noted in the protocol; also date and place of interrogation, start and finish time of interrogation.

8. If an interrogated person refuses to sign the inquiry protocol, a special note is made in the protocol, and the protocol together with the full and continuous video materials (if there is some) is presented to the head of the Service, who has the authority to confirm by his signature the identity of the information reflected in the inquiry protocol with the process of inquiry.

Article 20. Cessation of Work Relations of an Administrator

1. If there is a sufficient ground for presupposition that the execution of work relations of an administrator hinders work inquiry, an authorized administrator applies to a corresponding official with a motivated document on the termination of work relations of an administrator.
2. The term of cessation of work relations shall be mentioned in the document, which shall not exceed the term fixed with the purpose of conducting relevant work inquiry.
3. Relevant official is obliged to inform the service on the results of the discussion of the document within two days period from receiving the document.

Article 21. Terms for Conducting Work Inquiry

1. Work inquiry shall be completed within one month.
2. A head of the Service can extend the term for one month, and for especially difficult cases - for two more months.

Article 22. End of Work Inquiry

Work inquiry ends up with the conclusion of work inquiry or with the decree on termination of work inquiry, which are made by the person (persons) conducting work inquiry and are signed by the head of the service.

Article 23. Conclusion of Work Inquiry

1. Conclusion of work inquiry consists of descriptive and resolute parts.
2. The descriptive part includes the reason for commencing work inquiry and its procession, time, method, place, motive, results, other essential conditions of the facts of corruptive law violations and person (persons), revealed in the commitment, evidences, conditions in the process of work inquiry.
3. The resolute part includes the type of corruptive law violation by indicating the legal norm which was violated and its article; presumable volume of disciplinary responsibility, which can be used for the person (persons) who has violated the law, if there is some; conditions, which have promoted to corruptive law violation and in case of need, propositions on amendments to be made in the activity of relevant treasury organization.
4. Conclusion of work inquiry will be presented to the President of Georgia and to the relevant state political official or/and administrator.

5. State political official (except the President of Georgia) and /or administrator is obliged to inform the service on implemented activities concerning the questions presented in the resolute part within 10 work days from receiving the conclusion of work inquiry.

Article 24. Decree on Termination of Work Inquiry

1. The decree on termination of work inquiry is made if:
 - a) the fact of corruptive law violation cannot be confirmed;
 - b) if the legal norm (legal norms), violation of which leads to commencing work inquiry, is no longer valid.
 - c) if an administrative or criminal case is commenced by the Service because of the fact leading to a work inquiry which is underway.
2. The reason and procession of work inquiry and grounds for termination of work inquiry are mentioned in the decree on termination of work inquiry.

Article 25. Conducting Operative-Investigative Activity, Inquiry and Preliminary Investigation

The Service carries out operative-investigative activity, inquiry and preliminary investigation according to the rule established by the legislation for the crime of corruption planned or committed by the officials envisaged in the "C" subsection of the Article 2 of this law.

Chapter VI

Service Staff

Article 26. Requirements Made to a Person to be Hired

1. A head of the Service determines the service staff on the basis of the decree approved by the President of Georgia.
 - a) A citizen of Georgia is considered an administrator, if he has background in law or special education, professional work experience of not less than 5 years; and knows the language of jurisprudence, has taken an oath and his business and moral traits and also health condition allows him to execute work duties.
 - b) Advisors and technical personnel, also other employees (including "open or undercover") are hired on the basis of contract. The decree determines the rule for their hiring and dismissal.
 - c) Position of the Service administrator cannot be taken with any other position, entrepreneurial or other compensated activity, scientific activity not including pedagogic and other creative activities.

- d) Service administrator cannot be a member of a political union or carry out political activity.
- e) Service administrator and other personnel are prohibited from arranging or participating in strikes.

Article 27. Oath of the Service Administrator

- a) Service administrator makes a vow to the President of Georgia when hired: "Before God and President I swear to meet the honored obligation of a service administrator of fighting against corruption in good faith, to satisfy the requirements of law, norms of work ethics in an exact and accurate manner, not to disclose state and work secrets. I swear to be impartial and uncorrupted and while executing work duties obey to the Constitution of Georgia and law only!".
- b) Service administrator can take an oath without religious vow. The text of the oath is signed by the person who takes an oath and it is kept in his personal file.

Article 28. Grounds for Refusing to Be Hired

The following people cannot be hired as administrators in the service:

- a) a sentenced person;
- b) a person ill with alcoholism, drug addiction, toxicity, psychiatric or other serious chronic illnesses;
- c) a person declared as incompetent or with restricted active capacity;
- d) a person dismissed from another job on the compromising basis.

Article 29. Rule for Dismissal from the Service

An administrator shall be dismissed from the Service:

- a) in case of deterioration of health condition, serious injury or chronic illness, which hampers the continuation of his duties to be performed.
- b) In case of expiration of the term of hiring; or of the term provided in the contract.
- c) because of failure to meet the requirements envisaged in the contract;
- d) because of being inappropriate for the Service;
- e) because of gross or systematic violation of Service discipline;
- f) in case of decrease of number of staff;

- g) in case of being elected or appointed in legislative, executive, judicial and local government or self-government bodies ;
- h) because of violation of requirements for being appropriate for the position;
- i) at his own request;
- j) because of breaking oath, disclosing the service secret and other inappropriate behaviors for service administrator and employee;
- k) on the basis of enacted guilty verdict for having committed a crime;
- l) in case of existence of the conditions provided in the subsections “A”-“C” of Article 28;
- m) in case of losing the citizenship of Georgia;
- n) in case of reaching the pension age (60 for women and 65 for men).

Article 30. Special Titles for the Service Administrators

1. A head of the Service, deputy head, head of the department and head of investigative body, senior investigator for especially important cases and investigator for especially important cases, also senior inspector for especially important cases, inspector for especially important cases and inspector are given special titles according to the occupied position, scientific degree, qualification and work experience, and also number of years of having worked in the service.
2. The rule for awarding or depriving of a special title is determined by the legislation of Georgia.
3. Because of special title a service administrator is provided with an additional payment.
4. Special titles for service administrators are equalized with special and social class titles, which are defined by the legislation on the administrators and employees of Procuracy of Georgia, judges of Constitutional Court and Courts of General Jurisdiction of Georgia, Ministry of Justice of Georgia, Military forces of Georgia, Ministries of Internals Affairs and State Security, State Departments of Intelligence and Border Protection of Georgia, Special Service for State Protection of Georgia.

Chapter VII

Legal and Special Protection of Service Administrators

Article 31. Legal Protection of the Service Administrators and Their Responsibility

1. Hindering the process of performing the Service duties by the service employee and abusing his dignity, exercising threat, confrontation, violence over him, deprivation of life, health and

property of a member of his family, or this kind of threat originates the responsibility provided in the law. In case of receiving an announcement or information about deprivation of life, health or property of the Service employee or the member of his family, relevant state bodies are obliged to take measures provided in the law for the protection of their personal safety and property.

2. The Service administrator has the right to keep and carry a fire-arm permitted under the work-staff duties, also special means for individual defense, the rules of keeping, carrying and use of which are determined by the legislation.
3. The Service administrator and other personnel have liability defined under a common rule for having committed crimes or administrative legal violations.
4. It is inadmissible to bring a criminal case against a Service administrator, or to detain and arrest him, to detain under the administrative rule, to forcefully make him come, to search his apartment, car, work place or to carry out personal search, to wiretap his phone or other technical means of communication and to execute control over him without the consent of the Chairman of the Supreme Court of Georgia. An Exception will be made in case of coincidental witnessing while committing a crime and the Chairman of the Supreme Court of Georgia and the head of the Service should be informed about that. If the Chairman of the Supreme Court of Georgia does not give consent, the detained or arrested administrator shall be immediately released.
5. The detained, arrested or accused service administrator is isolated from other special constituency while imprisoned.
6. Only the Prosecutor General of Georgia can file a criminal case against the Service administrator for having committed a crime. Only the Prosecutor General can investigate the crime committed by the Service administrator.
7. While investigating the criminal case filed against the Service administrator before making final decision the service head will dismiss a Service administrator from the occupied position under the established rule.
8. The following disciplinary measures are used against a Service administrator for violating the Service discipline:
 - a) notation;
 - b) warning
 - c) strict warning;
 - d) Termination from the position (service administrator, who has been dismissed from the occupied position, is under the control area of the cadre within the period of 3 months. After the expiration of the time-period, the service administrator shall be

appointed to another position of the Service, if there does not exist a ground for his dismissal);

- e) Termination.

Article 32. Incentives for Work Success

For perfect performance of work duty and other successes the following incentives are awarded for a Service administrator:

- a) Expression of appreciation;
- b) bonus or money awards;
- c) giving additional compensated vacation of 10 calendar days;
- d) releasing from earlier concluded disciplinary measure before the fixed term;
- e) nominating for the state award.

Article 33. Special Protection of a Service Administrator

1. The State assumes responsibility for creating appropriate conditions for work and life for Service administrators in order to ensure their independence and impartiality.
2. The funds allocated for the service are provided in the separate article of the state budget and it is impermissible to decrease the amount.
3. Damage incurred by the Service administrator (or the member of his family) which is connected with performing the Service duties, will be totally compensated from the state budget.
4. The President of Georgia determines the amount of additional payment connected with monetary awards and special titles for the Service administrator within the frames of budgetary assignments allocated for the Service.
5. It is inadmissible to decrease or eliminate salary and the material advantages fixed for a Service administrator through the whole time-period of authority.
6. In case of death of the Service administrator while performing service duties, his family is provided with one-time compensation which amounts to monetary award for five years. Burial expenses are covered by the state according to the established rule.
7. The Service administrator, who has been wounded, injured or physically incapacitated, is compensated from the state budget according to the degree of seriousness of bodily injury or illness which amounts to a money award for one to five years.

8. The Service administrator, who works for the service for five years, is given a life-long pension which amounts to a half salary.
9. The Service administrators benefit from a 45 day compensated vacation every year. When on a vacation, a service administrator is provided with the monetary assistance amounting to two months salary.

Article 34. Protection of the Objects Belonging to the Service

Relevant subdivision of special Service for state protection implements the protection of the Service buildings and the objects belonging to it.

Chapter VIII

Control and Supervision over the Activity of the Service

Article 35. Parliamentary Control Over the Activity of the Service

1. Parliamentary control over the Service activity is implemented by listening to the information of the head of the Service and also by other means established by the legislation.
2. The head of the Service presents information on the Service activity to the Parliament once a year.
3. Interference in the operative-investigative and procedural activities carried out by the Service is prohibited.

Article 36. Control of the President of Georgia on the Service Activity

1. The President of Georgia supervises the activity of the Service and periodically hears of the reports of the head of the Service on the activity of the Service in accordance with the law of Georgia "On structure and rule of the activity of the executive government".
2. The President of Georgia is not authorized to interfere in the operative-investigative and procedural activities of the Service.

Article 37. Judicial Control

Conduct of investigative, procedural and operative-investigative activities by the Service, which restrict the rights and freedoms guaranteed by the Constitution of Georgia, is permitted under the motivated decision of the Court and under the rule established by the law.

Article 38. Procuracy Supervision and Procedural Leadership

Prosecutor General of Georgia and special structural subdivision subordinated to the office of Prosecutor General, in the constituency of which three procurators are included, carry out inquiry and supervision on legacy of operative-investigative activities, also on the procedural leadership while investigating a crime.

Article 39. Financing and Material-technical Provision of the Service and the Special Structural Subdivision of the Office of Prosecutor General

1. Financing and material-technical provision of the Service and the special structural subdivision of the office of Prosecutor general is carried out with the funds from the state budget of Georgia.
2. Buildings, equipment, communications, posts and communications and other special technical means, also other immovable and movable property acquired or created at the expense of state budget represent the state property.

Chapter IX**Transitional Provisions****Article 40. Activities Necessary for the Enforcement of Law**

1. The President of Georgia shall establish a Service before 1 January, 1999 and adopt legal rules needed for its functioning.
2. On the basis of Article 33 of this law Prosecutor General of Georgia shall set up a special structural subdivision including three prosecutors under his immediate subordination before 1 January, 1999.
3. Prior to the approval of the budget of Georgia of 1999, the expenses of the Service and the special structural subdivision of the office of Prosecutor General of Georgia shall be financed from the fund of the President of Georgia.

Chapter X**Conclusive Provisions****Article 41. Enactment of the Law**

1. This law shall be enacted immediately at the time it is published.
2. Subsection "F" of Article 12 is valid until the enforcement of a new code for Execution of Judgments of Georgia.

The President of Georgia

Edward Shevardnadze

TAB G

CODE OF ETHICS OF PUBLIC OFFICIALS

The purpose of the code is to have an agreement based on the consent of employers and public officials define the guidelines, methods of application and procedural rules which promote the establishment and maintenance of democratic public administration enjoying the general esteem of society; and express the virtues and inner values which on the one hand promote the sketching of an exemplary ideal of public officials and on the other hand support the shaping of the image of public officials; and at the same time demonstrate dedication to public interest, the government and the colleagues, and be of compulsory force for all those joining the code.

Article 1

The college of Hungarian public officials deems the following as fundamental values determining its official actions:

service of public interest

lawfulness

handling of public affairs in a manner neutral to party-politics

top quality professional qualification

impartiality

effectiveness of equity and fairness

humanity

earning of citizens' satisfaction

individual taking of responsibilities

efficiency.

Article 2

Public officials shall even in their private life refrain from behaviours open to making a negative impact on the image of the college of public officials developed in society, or to shaking public confidence vested in an impartial, lawful and professional public administration.

Article 3

In order to treat the quality of the profession as a priority, we deem it necessary to impair the

requirement of professionalism to the least extent possible even under extraordinary circumstances, and if inevitable, then to remedy it as soon as possible.

Therefore, under all circumstances when a legal regulation allows employers to apply concessions within the scope of authority of consideration with respect to professional qualification or professional practice, they should only exercise such exceptional possibility in an ultimate event, after making their best efforts to enforce the requirement set forth in the legal regulation. Employers are to keep it in mind that the application of any concession should have the least negative impact possible on the quality of the professional operation of the organisation. In accord with their possibilities, employers are to make their best efforts in order to have the favoured public official to attain the desirable professional level set forth in the legal regulation as soon as possible.

Article 4

The token of general esteem by society is the confidence in the college of public officials. In order to maintain the impartial, neutral and unbiased operation of public administration and in order to strengthen public confidence, all situations must be evaded which may present the opportunity to raise suspicion - nation-widely or within the immediate social environment - that these values have been violated.

Therefore, employers should only exercise waiver from the prohibition of simultaneous employment only under extremely reasonable instances and only if the operationability of the organisation may not be otherwise ensured in the lack of such waiver and if the simultaneous employment of a relative does not threaten the positive public opinion vested in the impartial, unbiased operation of public administration and in the integrity of the public official.

Article 5

Effective and democratic selection calls for the application of the tender procedures by public administration organisations in the widest range possible.

Therefore, strongly limiting conditions which are to a great extent likely to cross the possibility of selection - in contrast with the objectives of the tender - due to their details must be avoided in the tender invitation - unless they follow from the special nature of the position.

In order to prevent unfounded accusations, rumours arising from the lack of information, the democratic operation, the transparency and the fairness calls for the employer adopting a reasoned decision and to notify those it has not selected in writing on the reasons thereto, if more than one applicant have met the prescribed requirements.

In accord with the possibilities, an intention has to be the widest publicity of the decision on the selection possible.

Article 6

Considering that public officials with a life tenure public in public service of professional administration career type ensure the continuous operation of public administration, fixed-term employment should only be exercised in a target-oriented manner and under exceptional circumstances.

Therefore, it is unfair to a public official and its recurring appearance threatens the balanced operation of public administration if an employer consecutively prolongates and thus abuses the appointment by exploiting the legal option of fixed-term employment.

The personnel activities of an employer are judged and the insufficiency of its recruiting practices is supported if the application of probation periods becomes a general practice at the public administration organisation. Therefore, employers are to exercise this option only exceptionally, in instances when the candidate conforms to the conditions of employment, yet certain doubts arise in connection with the human, ethical-professional suitability of the candidate.

Article 7

The fair treatment of public officials demand employers not to abuse the authority of consideration.

Therefore, will refuse to give their consent to final transfer of public officials less then two months in advance only if the legal relationship has to be maintained because they are unable to resolve work administration problems arising from the vacancy, and therefore the operationability of the organisation would be in jeopardy. It is important with a view to the integrity of employer to avoid even the suspicion of the abuse of the authority of consideration. Therefore, public officials have to be notified on the reasons of refusal of consent in writing.

Article 8

In order to develop and strengthen the awareness of affiliation with the college of public administration in public officials, and for this link to be long-lasting, the state as "bread-giver" has the obligation to provide for the organisation of the college in a manner contributing to the strengthening of the self-esteem of public officials.

Therefore, regardless of the special branches in which public officials are engaged within the system of the public administration organisations, their employers may reasonably be expected to regard them not only as employees of the particular organisation but also as part of the entire college of public officials, and to adopt measures related to them with a view to the effectiveness of this perspective. The importance of this needs particular emphasis in events of dismissal for organisational reasons.

It must be an intention throughout organisational restructuring that dismissal of public officials should not be a side-effect if possible: if this may not be avoided, then employers are to attempt to retain public officials becoming unnecessary in their organisations within the public administration (e.g. through the institution of reserve staff), and the ultimate option should be a

dismissal as a result of which a public official would be removed from the system of the public administration organisations.

Article 9

The earning of recognition by taxpaying citizens demands public administration to fulfil its mission with the best results possible at the lowest financial expenditures possible, and to focus on organisational development and operation methods rapidly adapting to changes in this social and economic environment in compliance with values regarded as traditional in order to achieve the foregoing, however, not omitting the possibility of adopting decisions effecting human fortune in connection with organisational modernisation.

Therefore, human treatment is a must even if dismissal of a public official from public service is inevitable - for the improvement of the efficiency of public administration. Human proceedings by all means include that employer is to notify the public official on its intent of dismissal allowing for preparation for dismissal in time - with consideration given to age, family circumstances, professional qualification and experience. This may however not hinder the adoption of urgent measures. It also follows from the obligation of co-operation deriving from statutory provisions that employers - in accord with their possibilities - assist dismissed public officials in finding a place of work.

Article 10

A public administration operating in a balanced, impartial and quality manner demands public officials in return for the opportunity to exercise an profession for life - guarantees of which are the computability and planability of a career advancement ensuring decent living, the stability of employment - to perform their responsibilities with full commitment of their expertise and skills and in accord with their best professional knowledge.

Therefore, they - with the exception of senior officials - should establish other and additional legal relationship associated with the performance of work only upon the condition that it is not unworthy of their profession and does not threaten their professional independence, does not hinder the effective performance of their work - in particular with a view to the possibility of over-time work, the obligation of availability, and the exhaustion necessarily associated with the extra work -, and that the accumulation of jobs should not lead to the exploitation of their health.

Professional self-actualisation constitutes an important part of exercising the profession of public officials, therefore the performance of scientific, educational, artistic, literary advisory, editorial activities and activities protected by copyrights are to be encouraged and supported, since they may too enrich the intellectual potential of the college of public officials, and thus may contribute to the improvement of the performance of public administration.

Article 11

For the sake of impartiality of public administration, public officials should evade all situations which may lead to undesirable interpenetration and may raise serious doubts in the public with regard to an impartial, unbiased public administration.

Therefore, public officials are obliged to report all facts and data to employer upon establishment of other and additional legal relationship associated with the performance of work without which the right of authorisation set forth by law may not be exercised prudentially.

By no means may a permission be granted if other and additional legal relationship aims at activities which are unworthy for the office or the profession of the public official, or threatens impartial and unbiased activities.

Furthermore, public officials may not undertake an public appearance - with the exception of participation in the parliamentary or the self-governmental elections - that would make them a local or national political public figure. They may not participate in party events in a public official capacity and may not give statements or promises on behalf of their employers. They may not represent party interests in public life through either a statement or other behaviour.

Public officials have a reporting obligation to the entity exercising employer's rights if they are registered by the election committee as a candidate for member of parliament. The deadline for the reporting obligation is the first business day following the registration.

With consideration given to public officials (senior public officials) not being allowed to undertake any public appearance on behalf or in the interest of a party - with the exception of participation in the parliamentary or the self-governmental elections as candidates -, and being obliged to handle public affairs in a manner neutral to party-politics, for the period of being a candidate for member of parliament or self-governmental representative

it is reasonable for them to exercise the option set forth in Paragraph (1) of Article I of Act LV of 1990, whereas employer is obliged to grant a leave without pay or should grand a regular annual vacation to the candidates for member of parliament - upon request;

in case a candidate would not take the leave without pay (regular vacation), then for the period of being a candidate for member of parliament or self-governmental representative:

state-secretaries and public officials with senior assignments should not exercise their employer's rights, public officials with senior assignments and public officials should not exercise their right of certification in connection with state administration official authority;

it is also reasonable that state-secretaries and public officials with senior assignments should not perform organisational restructuring substantially influencing the life of the official organisation;

it is furthermore reasonable that state-secretaries and public officials with senior assignments should not exercise their right of certification as a consequence to which they would decide in financial or personal issues having a significant impact.

They are furthermore obliged to notify their employer on detailed information regarding the activities and operation of the company upon being offered a senior position or a membership in the board of supervisors at a business venture, and to inform employer on all other facts and circumstances which may influence the decision of employer to be adopted in its right of consideration.

Senior positions and memberships in boards of supervisors are by all means incompatible with the legal relationship of public officials if upon acceptance they threaten to result in a more advantageous situation to the business venture concerned over others. The acceptance of a position has to be refused as well if it is unworthy of the office of the public official or would threaten the unbiased activity of the public official.

Article 12

The strengthening of democracy and of affiliation with the organisation, the promotion of quality professional work, the enforcement of the educating power of positive and negative examples all demand the publicity of each management decision along with their reasoning or appreciation that is associated with expedite career advancement, granting of titles, rewarding, decoration, extraordinary compensation or career setback.

Article 13

The general improvement of professional quality is indispensable for an efficient public administration and for earning the general esteem of society.

Therefore, public officials must in the course of extension training opportunities beyond the mandatory participation aim at enriching their special knowledge and expertise, at actively utilising the time allotted to extension training, and at preparing for the application of knowledge in practice.

In addition to the extension training opportunities provided for in an organised manner, they furthermore have to enrich their professional knowledge, skills through self-training in order to handle administration at a higher speed and quality.

Moreover, it is desirable that if deemed necessary, they initiate participation in extension training at their employers. Their demands may however not extend beyond the burden capacity of the public administration organisation. It may also reasonably be expected that their participation in

extension training be limited to the scope of esprit de corps and be yielding no disproportionate extra burden to their colleagues.

Furthermore, they have to attempt to decide in collaboration with their employers the type and topic of extension training that would suit their professional advancement the best.

Moreover, the public administration organisation may be expected to refrain from hindering and to promote the regular and continuous extension training of their public officials in accord with its possibilities.

Article 14

Performance-oriented public administration demand planned, deliberate and equitable behaviour on behalf of employers, and this requires the continuous and objective assessment of the performance of public officials. It also follows from the need of public officials for human and professional recognition that in order to shape their "self-image" they should receive feed-back through the regular assessment of their work.

Therefore, employers have to refrain from turning the rating into a formal act failing to assist the development of either the organisation or the public official. The findings enumerated in the rating must be specific in a way promoting development of the two aforementioned aspects and allowing for the accountability of requirements identified in the course of the subsequent rating. In order to achieve this, it is reasonable to identify objectives based on unbiased assessment of the situation, along with the means and opportunities required for their achievement and the specification of corresponding deadlines.

Public officials have to be presented the opportunity of self-assessment in the course of the rating procedure in a manner allowing for the identification of their own rating as part of the performance of the organisation and for the specification of needs related to the assistance required for supporting their "self-improvement".

Article 15

Professional, impartial equitable and refined administration is a basic obligation of every public official.

Therefore, the minimum that may be demanded from public officials is to perform their work well, this includes the best utilisation of daily business hours, the compliance with procedural rules and deadlines, the refined manners with clients either in direct contacts or over the telephone, in writing. They are to be helpful, polite, collaborating with their colleagues and should provide all personal assistance for the professional improvement of job entrants or less experienced colleagues, in particular. Their contacts with colleagues should be overwhelmed by the unconditional respect of others.

Moreover, their outlook, refined clothing should strengthen the prestige of the place of work, express respect towards their superiors, colleagues and the citizens. This requirement is even more

dominant if a public official appear in front of an external agency or the public on behalf of the employer.

Article 16

A public administration operating in an impartial and unbiased manner demands that no information impairing the public administration organisation or its associates be disclosed beyond compliance with legal stipulations governing the handling of state and service secrets. Particular care has to be devoted to ensure that the use of data and facts acquired in the course of official activities do not threaten the confidence vested in the neutrality of the college of public officials to party-politics. At the same time, the freedom of expression of public officials should also be protected, in particular when loyalty to the public interest proves stronger than the "conspiracy of silence" demanded by the employer.

Therefore, public officials are obliged beyond keeping state and service secrets to treat all data, fact and information confidential the use of which could threaten the values set forth in the code, thus in particular lawfulness, handling of public affairs in a manner neutral to party-politics, impartiality, equity, fairness, and humanity. In connection with this obligation, it is of explicit importance that public officials are entitled to freely express their dissatisfaction in connection with procedures or decisions they deem wrong or unjust in a moral sense. They are to exercise this right primarily within the organisation. They should exploit the means of anonymous objection (that is leaking) only in exceptional cases of emergency, and should only turn to publicity if proofs required for "alarming" the public are available, if "obstruction" aims against severe abuse, and if the loud expression of opinion offers no option for adjustment, or if open objection would likely to be followed by severe existential sanctions.

Article 17

The general esteem of public administration by society is decisively demonstrated in the standards of living of the college of public officials, and by the income-earning relations and other non-financial type benefits promoting public officials in foreseeing the prosperity of their own and of their families in a "career-span" offered by public administration. High performance, ethic behaviour may only be expected from public officials who put their full labour force and talent in the service of the public - trusting in a recurring and fair, proportionately increasing, performance-reflecting monthly compensation and in the security of employment - without having to engage in other income-earning activities or playing with the thought of leaving for pressing financial circumstances.

Therefore, the remunerations of public officials have to be determined on the basis of merits, in accord with the requirement of equity, and in a manner establishing the incentives of better performances beyond security. Employers should only deviate from remuneration in accord with the general regulations within their own discretionary authority only if it is by all means justified by the performance of the public official, and if it is desirable with a view to educational influence. It should be prevented by all means to differentiate between public officials with respect to compensation at the expense of each other, with a particular view to raise funds. Public

officials may by no means be distinguished with respect to the principles identified here according to the areas of public administration in which they work.

Article 18

The respect for human beings demands employers not to regard public officials solely as the subjects of their measures but to see the human beings behind the decisions. The offending of human dignity, the establishment of humiliating situations may not be justified in any way.

TAB H

CODE OF CONDUCT
FOR
THE CIVIL SERVANTS
OF
THE KINGDOM OF NEPAL

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CODE OF CONDUCT UNDER CIVIL SERVICE ACT AND CIVIL SERVICE RULES

WHO IS A CIVIL SERVANT?

The code of conduct provided by Civil Service Act 2049 B.S., and the Rules made there under govern a government employee who falls under the definition of a civil servant. It does not cover all those government employees who are recruited as members of non-civil service such as police and army. It also does not cover an employee of an agency of the Government with independent corporate personality. It also does not include persons appointed to political post or as a judge or as a member of independent constitutional body. Code of conduct provided in Civil Service Act therefore leave out a large number of executive employees who do not fall under the definition of civil servant as provided in the Act.

A civil servant, for the purpose of code of conduct provided by the Civil Service Act, is an employee of His Majesty's Government who falls under the definition of Section 2 (c) read with Section 2(b) and Section 3 of the Act. As per the definition under the Section, any employee of His Majesty's Government, permanent or temporary, falling under following services is included:

- (1) Nepal economic, planning and statistical service
- (2) Nepal Engineering Service
- (3) Nepal Agriculture Service
- (4) Nepal Judicial Service
- (5) Nepal Administrative Service
- (6) Nepal Forest Service
- (7) Nepal Miscellaneous Service
- (8) Nepal Education Service
- (9) Nepal Parliament Service
- (10) Nepal Health Service.

A person working as a civil servant in any of the above services may belong to any class of gazette or non-gazette rank or a person without any rank. A person may be appointed in any of the given rank to the technical, administrative or expert post. He or she may be a civil servant appointed by His Majesty's Government on the recommendation of Public Service Commission or directly appointed by His Majesty's Government under the existing law. A civil servant also includes a person appointed by His Majesty's Government under the special procedure specified by Civil Service Rules to the expert post or to a post without rank and class.

This code of conduct generally governs a person who is enrolled as a civil servant at the relevant time. Certain specific provisions of the Code also govern a former civil servant who is dismissed, retired or resigned from the service.

CODE OF CONDUCT FOR CIVIL SERVANTS

Civil Service Act 2049 B.S.¹ chapter 7 provides following standards for conduct of civil servants in Nepal.

1. PUNCTUALITY AND REGULARITY

A civil servant shall be punctual and regular in his attendance of the office in accordance with the time schedule specified by His Majesty's Government from time to time. To the best possible extent he or she shall not remain absent from his duty without prior approval his leave of absence.

2. DISCIPLINE AND OBEDIENCE

- (1) A civil servant shall carry out his official responsibility with diligence, honesty and in full discipline.
- (2) A civil servant shall promptly carryout the orders of his superior in relation to his official responsibility.
- (3) A civil servant shall show proper respect to his senior officials and behave properly with junior officials.

3. PROHIBITION ON USING POLITICAL OR OTHER INAPPROPRIATE INFLUENCES

A civil servant shall not use or try to use political or other inappropriate influences against any other civil servant with an intention of serving his vested personal interest.

4. PROHIBITION ON POLITICAL ACTIVITY

A civil servant shall not take part in political activity.

5. PROHIBITION ON CRTICISM OF GOVERNMENT

- (1) A civil servant shall neither publish any article, nor inform the press, nor publicly broadcast (through radio or television), nor give any public speech, nor issue public statement in any manner that will go against the public policy of His Majesty's Government or which is likely to disturb the cordial relationship of His Majesty's Government with the people or any foreign government. A civil servant shall not do any of the above acts either in his name, fake name or anonymous.

¹ *Bikram Sambat (B.S.)*, An official Nepali calendar (like A.D. in the West).

- (2) Provided that nothing in the Sub-section (1) of this Section shall prohibit a civil servant from publishing or broadcasting an article that do not go against the existing law or public policy of His Majesty's Government.

6. PROHIBITION ON DISCLOSURE OF INFORMATION

A civil servant shall not disclose directly or indirectly any information acquired or collected by him in the process of carrying out his official duty if:

1. The information is confidential
2. The disclosure of such information is prohibited by law

Disclosure of information for the purpose of this Section includes passing on the information materials or communication of information to any unauthorized official or private citizen or press.

Provided that the disclosure of such information with the prior approval of His Majesty's Government shall not be considered as breach of this code of conduct.

Prohibition on disclosure of information under this Section shall continue to bind a civil servant even after the termination of his service by any means.

7. PROHIBITION ON GIFTS, DONATIONS AND LOANS

- (1) A civil servant or a member of his family shall not accept any kind of gift, present or demand donation from any person or take loan from a person related to official duty if it is likely to prejudice the official duty in any way. A prior approval of His Majesty's Government must be taken to accept such gift, present and donation or take loan.
- (2) If a civil servant receives any gift or present from a foreign government or its representative, he or she shall report the matter to His Majesty's Government and shall do as per the decision of His Majesty's Government.

8. PROHIBITION ON BUSINESS AND COMPANY

- (1) A civil servant shall not do following things without the prior approval of His Majesty's Government:
 - (a) to participate in the establishment, registration or management of any bank or company;
 - (b) to engage in any business or profession which needs to be legally registered; or
 - (c) to accept any kind of outside employment.

- (2) Notwithstanding any thing in Sub-section (1) of this Section, a civil servant may engage in any work of art, literature or science, which do not contradict the public policy of His Majesty's Government.

9. PROHIBITION ON ELECTION ACTIVITIES

A civil servant shall not take part in the election for any political post. A civil servant shall neither solicit vote for any candidate in such election nor try to influence in the election in any manner.

Provided that a civil servant shall be free to exercise his voting right without any disclosure of his intention or exercise of vote in favor of any candidate.

10. PROHIBITION ON DEMONSTRATION AND STRIKES

A civil servant shall not engage in any demonstration or strike which would:

- undermine the sovereignty and integrity of the Kingdom of Nepal;
- undermine the peace and security of the country;
- spoil the foreign relation of Nepal;
- undermine the public decency or morality;
- lead to disrespect of court decisions or contempt of court;
- jeopardize the harmonious relations subsisting among the peoples of various castes, tribes, religion, regions or communities;
- create communal misunderstandings or tensions; or
- incite any person to engage in any crime.

A civil servant shall not engage in any activity with an intention of inciting others to commit above mentioned offences.

11. PROHIBITION ON PICKETING, STRIKES OR DETENTION

A civil servant shall not obstruct any office or its personnel from carrying out official duty by any act of picketing or (pen down) strike. He she shall not put any kind of pressure on an officer that would cause him mental or physical torture. Nor he or she shall incite others to engage in above activities.

12. PROHIBITION OF REPRESENTATION

A civil servant shall not make any representation on behalf of any person or group before any officer or department. A civil servant however shall be free to make a petition in person or through his appointed attorney before a concerned official or department for his personal cause.

Provided that this Act shall not prevent a civil servant from representing a HMG recognized civil servants union or carrying out his duties as an officer of HMG.

13. CIVIL SERVICE UNION

- (1) In order to promote and protect professional right and interest, non-gazette and non-classified civil servants may constitute a national union of such civil servants.
- (2) A civil servant shall not be entitled to any special leave or privilege by virtue of holding any office in such union.
- (3) The formation and management of such union shall be governed by the existing law.

14. FINANCIAL DISCLOSURE

A civil servant must submit his property statement.

15. CODE OF CONDUCT IN ACCORDANCE WITH HIS POST AND SERVICE

A civil servant shall act according to discipline and code of conduct appropriate to his post or service.

16. WARNING

A concerned supervisor may issue a notice of warning with reasons to a civil servant if he or she does not follow the time schedule, does not obey the instructions from his superior officials or neglect his official duty. The issue of such warning to a civil servant shall be recorded in the personal record file of such civil servant.

RELATED STATUTES NOT TO BE IGNORED

In addition to the standards set by code of conduct for a civil servant (under Civil Service Act and the Rules made there under) there are many related statutes that prohibit and punish certain conduct. These statutes are summarized in the appropriate parts of this material. These provisions must be taken into consideration in determining whether a conduct is proper or not. Civil servants are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally. Because an employee is considered to be on notice of the requirements of any statute, a civil servant should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain advice from law officer in the department.

PUNISHMENT FOR VIOLATION OF CODE OF CONDUCT

Civil Service Act has not only defined the code of conduct for civil servant it has also provided power and procedure for departmental inquiry and punishment for breach of such code of conduct. However the departmental inquiry or punishment for breach of code of conduct do not restrict any other legal action in the court of law if such breach also means a violation of other laws. A prosecution against a civil servant in court of law may precede departmental action and vice versa. So a civil servant has to not only see that he or she comply with code of conduct under Civil Service Act and the rules there under but also see that he is well informed about the specific norms laid down by other relevant laws.

Civil Service Act provide for two categories of punishment for breach of code of conduct prescribed in Civil Service Act and the Rules made there under. It has also provided the grounds on which a civil servant can be given such punishment. The Civil Service Rules made there under has specified the authorities that can take departmental action and the authorities to which appeal can be made against such action.

CATEGORIES OF PUNISHMENT FOR BREACH OF CODE OF CONDUCT

Section 59 of the Act provides for two categories of punishment.

Ordinary Punishment

- (1) To issue warning
- (2) To deny salary increment for maximum of two times.
- (3) To deny promotion for the maximum period of two years.

Special Punishment

- (1) Dismissal without disqualification for fresh appointment in civil service.
- (2) Dismissal with permanent disqualification for fresh appointment in civil service.

GROUND FOR ORDINARY PUNISHMENT

Section 60 provides the grounds for ordinary punishment. The competent authority has the discretion to award any of the ordinary punishment depending on the severity of the offence.

- (1) Non satisfactory performance of his or her official duty.
- (2) Not reporting to the duty office to which he has been transferred within the time specified there for.
- (3) Regular absence from duty without taking prior approval.
- (4) Act of indiscipline
- (5) Breach of code of conduct under this Act or the Rules made there under.

- (6) Failure to handover or takeover official cash, paper or other materials within the time specified there for.

GROUND FOR SPECIAL PUNISHMENT

Section 61 provides grounds for special punishment. The competent authority has the power to dismiss without disqualification for future appointments in civil service on following grounds:

- (1) Failure to carryout his or her official duty or responsibility due to incompetence.
- (2) Repeated breach of code of conduct.
- (3) Repeated use of intoxicating materials during the office time.
- (4) Repeated act of indiscipline.
- (5) Participation in political activities.
- (6) Repeated negligence of his or her official duty.
- (7) Continuous absence in office up to 90 days without prior leaves.

The competent authority has the power to dismiss with permanent disqualification for future appointments in civil service on following grounds:

- (1) Conviction from a court of law for an immoral crime.
- (2) Corruption. (Acts amounting to corruption have been described in Anti-corruption Act 2017 B.S.)

Section 64 provides for suspension of a civil servant accused an offence calling for special punishment. This Section empowers an authority taking disciplinary action (calling for dismissal from service) to suspend an accused civil servant till the investigation is not completed. Ordinarily a suspension order is not to be issued unless the accused, if not suspended, is likely to tamper with the relevant evidence or cause loss to Government property. However, if the accused is arrested for an immoral crime and is put in detention for prosecution, he or she shall be automatically suspended from service for the period under detention.

PROCEDURE FOR DEPARTMENTAL INQUIRY

Section 66 to 70 of the Civil Service Act provides for procedure of departmental inquiry and action on breach of code of conduct. The salient features of the procedure include;

Right to Hearing

An accused civil servant must be given full right to hearing before any action. The authority must give an accused a notice for hearing. The notice must specify the charge, grounds of the charge and the time period for submitting defense.

Additional Right to Hearing

If the accused charged of an offence punishable by special punishment fails to submit his defense in time or if his defense is not accepted as adequate or convincing for acquittal, he must be given show cause notice as to why he should not be given the proposed punishment.

Consultation with Public Service Commission

If the competent authority comes to conclusion and decides to hold the accused liable for departmental punishment, he or she shall refer the matter for consultation to Public Service Commission. Such a reference shall mention the grounds for decision and the punishment proposed for such action.

Appeal

A civil servant not satisfied with the decision of the authority taking disciplinary action may appeal personally or through an attorney. If the appeal is against the award of ordinary punishment then the matter is to be heard by a specified authority (higher officer in civil service). If the appeal is against the award of special punishment then the matter is heard by Administrative Court. The decision of appellate authority is final.²

² The decision of the appellate authority can however be reviewed by Supreme Court if the decision suffers from jurisdictional error or error of law apparent on the face of the record or goes against the due process guaranteed by the Constitution.

ABUSE OF AUTHORITY

Overview

Abuse of authority by a person holding public post is considered as serious offence and the Constitution has created a special independent constitutional body to investigate, report and prosecute persons involved in such offence. By definition a person holding public post includes a civil servant. Hence a civil servant is liable to be dealt with by the Abuse of Authority Investigation Commission (hereinafter called the Commission) under its parent Act (Abuse of Authority Investigation Commission Act 2048 B.S.) for any act amounting to abuse of authority. Abuse of authority may be made by a civil servant in two ways. Firstly, he may abuse the authority by improper exercise of power vested in him (as defined in Section 3 of the Act). Secondly, he may also abuse the authority vested in him by acting in a way that amounts to corruption (as defined in Anti-corruption Act 2017 B.S.).

The Commission has the authority to investigate the abuse of power by improper exercise of power on the formal complaint by a person. After the investigation the Commission, if the abuse of authority is established, shall send the case to the concerned authority³ for appropriate departmental action.

The Commission has also the authority to investigate any act of corruption by a civil servant on its own or on the formal complaint by any person. If the investigation report show the grounds to prosecute for corruption the Commission has the sole power to prosecute such civil servant in the court of law.

Delegation of Power

The Commission has delegated a part of its power to Special Police Department and Chief District Officers. Special Police Department investigates the civil servants up to the level of second class gazette officers if they are within the territorial jurisdiction of Kathmandu Valley, and the concerned Chief District Officer investigates the case if it is within the territorial jurisdiction of a District. In the cases of civil servants above second class gazette rank, the Commission itself carries out the investigations. In the matter of prosecution for corruption, the concerned authority for concerned territorial jurisdiction forwards the file to the Government advocate and the Government advocate takes the decision in the matter. If the prosecution for corruption is to be done against a civil

³ The concerned authority here refers to the officer or authority appointed under Civil Service Rules for taking departmental action against a civil servant of particular class. The Commission sends the case to the concerned authority for departmental action if it finds sufficient grounds for action. It also recommends the appropriate punishment for the offence. On receiving such reference the concerned authority has to report the Commission about the action or inaction over the matter. If the department concerned do not take action as per reference the Commission has to mention it in its annual report to the parliament.

servant above second class the matter is taken up directly by the Commission or through the office of Attorney General.

<i>Institution</i>	<i>Personnel jurisdiction</i>	<i>Territorial jurisdiction</i>	<i>Subject matter jurisdiction</i>
The Commission	Above 2 nd Class gazette civil servants and head of the departments	Through out the Kingdom of Nepal	Investigation of Abuse of authority and prosecution for corruption
The Special Police Department	Civil servants up to 2 nd class gazette	Within the Kathmandu Valley	Investigation of Abuse of authority including corruption
Chief District Officers	Civil servants up to 2 nd class gazette	Within the jurisdiction of the district concerned	Investigation of Abuse of authority including corruption
Attorney General office and its branch office all over the districts	All the civil servants	Through out the Kingdom of Nepal	Prosecution for corruption

Improper Act or Exercise of Power

Section 3 of the Act defines the scope of improper act. According to the Section a civil servant shall be held liable for abuse of power if he or she knowingly or recklessly:

- (1) Refuses to take action that falls within his or her jurisdiction or takes action which do not fall within his or her jurisdiction.
- (2) Failure to follow mandatory procedure at the time of taking any decision or issuing order.
- (3) Exercise of power vested in him or her for the extraneous purpose not authorized by concerned law, decision or order.
- (4) Exercise of his or her discretionary power in an arbitrary or *malafide* manner.
- (5) Unauthorized obstruction in the function of other office, officer or employee or using pressure to compel such office, officer or employee to do illegal act
- (6) Avoiding one's responsibility by sending a matter within his or her responsibility to other office or officer.
- (7) Failure to abide by the duties of an officer arising from the nature of such office.

Punishment

The punishment for improper exercise of power depends upon the facts and circumstances of the case. It could be mere warning from the Commission, a departmental action from the authority concerned or it could be a prosecution in a court of law if it involves violation of criminal law.

Procedure for Investigation

The Commission (including an authority to which the power has been delegated) makes an investigation of the case only on the complaint lodged by an affected party. The Commission may decide not to investigate the case if there is no prima facie evidence in the complaint.

If the accused is a civil servant of a Government department, the Commission sends the case to the Minister concerned for issue of necessary warning or departmental action or any other legal action on finding sufficient grounds for such action. If the accused is an employee working for a public corporation, the Commission sends the case to the chief of the corporation concerned for issue of necessary warning or departmental action or any other legal action on finding sufficient grounds for such action.

On receiving such reference the concerned authority has to inform the Commission and the complainant about the action or inaction over the matter.

If the chief of the corporation do not take action as per the reference of the Commission the matter is referred to the Minister in charge of the corporation. If the Minister concerned do not take action as per reference the Commission has to mention it in its annual report to the parliament.

The Commission has the power to take witness, requisition the files and papers that can be evidence in the case or require the attendance of any person for investigation. The Commission gives right to hearing to the accused before taking any decision against him or her.

Corruption

Section 2 (i) of the Anti-corruption Act 2017 B.S. (hereinafter called the Act) defines the term "Bribe" as any economic benefit by way of cash or kind including amount, fee, premium, award or gift (other than legally payable remuneration, allowance or any other payment). Section 3 of the Act prohibits and punishes a civil servant (or who is to be appointed as a civil servant) from taking, attempting to take or consenting to take any bribe for himself or for others for any official duty or act related with official duty. Section 3 prohibits a civil servant (or who is to be appointed a civil servant) from taking a bribe for any of the following acts.

1. to do or not to do an official duty or any act related to his or her official duty;
2. for having done or not having done any official duty or any act related to his or her official duty;
3. to give or not to give any favor in performing any official duty or any act related to his or her official duty;

4. for having favored or denied any favor in performing any official duty or any act related to his or her official duty;
5. to disfavor or not to disfavor any person in performing any official duty or any act related to his or her official duty; and
6. to promise to do some thing though he or she does not intend to do or to take any benefit by saying that he did a certain act when he actually did not do.

Remuneration legally permitted for any official act means a salary and allowance a civil servant can legally claim and also includes any other payment allowed for such service.

Punishment

A person guilty under this Section is liable to be punished by way of imprisonment from 2 to 6 years or fine or both depending on the severity of crime. If the bribe has already been received the same shall be confiscated and shall be deposited in consolidated fund of His Majesty's Government.

Section 4 of the Act prohibits and punishes any person (including civil servant) from taking, attempting to take or consenting to take any bribe for himself or for others for any of the following acts.

7. to make a civil servant agree to do or not to do an official duty or any act related to his or her official duty;
8. for making a civil servant agree to do or not to do any official duty or any act related to his or her official duty;
9. to make a civil servant agree to give or not to give any favor in performing any official duty or any act related to his or her official duty;
10. for making a civil servant agree to favor or deny any favor in performing any official duty or any act related to his or her official duty;
11. to make a civil servant agree to disfavor or not to disfavor any person in performing any official duty or any act related to his or her official duty; and
12. for making a civil servant agree to disfavor or not disfavor any person in performing any official duty or an act related to his official duty.

Explanation

A person is presumed to commit an offence under this Section if a civil servant takes bribe for promising to do some thing though he or she does not intend to do or by saying that he did a certain act when he actually did not do.

Remuneration legally permitted for any official act means a salary and allowance a civil servant can legally claim and also includes any other payment allowed for such service.

Punishment

If the offender under this Section uses corrupt or illegal means to influence a civil servant he or she is liable to be punished by way of imprisonment from 2 to 6 years or fine or both depending on the severity of crime. If the bribe has already been received the same

shall be confiscated and shall be deposited in consolidated fund of His Majesty's Government.

If it relates to use of personal influence against a civil servant, he or she is liable to be punished by way of imprisonment from 1 to 2 years or fine or both depending on the severity of crime. If the bribe has already been received the same shall be confiscated and shall be deposited in consolidated fund of His Majesty's Government.

Section 5 prohibits and punishes a person (includes a civil servant) for inciting any person (includes a civil servant) to engage in a crime under Section 3 or 4. It provides that a person is liable to be punished under Section 5 irrespective of fact whether the offence was committed or not as a result of such incitement.

Punishment

If the incitement comes from a civil servant, he or she is liable to be given punishment prescribed for the offence concerned (under Section 3 or 4) depending on the severity of the crime. However if the incitement comes from a non-civil servant then he or she is liable to be given half of the punishment prescribed for a civil servant.

Section 6 prohibits and punishes a civil servant for taking any thing free of cost or inadequate cost from a person related to his official duty. According to this Section, a civil servant is liable to be punished if:

1. he or she knowingly takes, attempts to take or agrees to take, without the approval of His Majesty's Government, for himself or for others any thing free of cost or inadequate cost or gift, present, award, donation or assistance,
2. from a person who is concerned or likely to be concerned with the functions of his office or his official duty or performance of an act related to his official post or an act about to be performed in relation to such post.

Provided that a civil servant shall not be liable under this Section if he informs His Majesty's Government as soon as possible the receipt of any thing by way of present, gift or assistance from such person.

Punishment

A person guilty under this Section is liable to be punished by way of imprisonment from 6 months to 3 years or fine or both depending on the severity of crime. If the bribe has already been received the same shall be confiscated and shall be deposited in consolidated fund of His Majesty's Government.

Section 7 talks of prohibition and punishment related to the performance of an act by a civil servant with a *malafide* intention of causing illegal benefit or illegal loss. According to this Section a civil servant is liable to be punished if:

1. he or she knowingly violates the law,

2. he or she knowingly violates the oath, agreement, contract, or commitment to His Majesty or His Majesty's Government,
3. he or she misuses the Governmental authority or privilege,
4. he or she wrongfully acquires such authority or privilege,

with a *malafide* intention of causing unlawful benefit to himself or to others or to cause unlawful loss to the nation, His Majesty, His Majesty's Government, Government recognized organization or any person. It is an offence under this Section to make an attempt to do any of the above things.

Punishment

A person guilty under this Section is liable to be punished by way of imprisonment from 1 year to 3 years or fine or both depending on the severity of crime. (Comment: the Section must be amended to provide for seizure of unlawful gain and damages for loss)

Section 9 talks of prohibition and punishment related to the preparation of wrong document or wrong interpretation of document. According to this Section a civil servant, with an official duty to prepare documents or translate documents, is liable to be punished:

- (1) if he prepares a wrong document or makes a wrong translation with a specific bad intention of causing loss to the nation, His Majesty, His Majesty's Government, Government recognized organization, or any other person,
- (2) if he prepares a wrong document or makes a wrong translation with knowledge that the document prepared or translated by him or her is wrong and it might cause loss to the nation, His Majesty, His Majesty's Government, Government recognized organization, or any other person.

Punishment

A person guilty under this Section is liable to be punished by way of imprisonment from 2 year to 6 years or fine or both depending on the severity of crime.

Section 9 (a) talks of prohibition and punishment related to the violation of confidentiality of question papers. According to this Section a civil servant is liable to be punished if he violates or causes any other person to violate the confidentiality of a question paper in any manner:

- (1) if it is done with a bad intention of causing unlawful gain to oneself or to any other person, and
- (2) if such violation of confidentiality relate to a question paper for an exam to be conducted by His Majesty's Government, Public Service Commission, or other registered body.

Provided that a concerned authority shall not be held liable if, for special reasons to be specified, it has to open or cause others to open such question paper before the due date.

Punishment

A person guilty under this Section is liable to be punished by way of imprisonment from 1 month to 1 year or fine or both depending on the severity of crime.

Section 10 prohibits and punishes a civil servant for engaging in unauthorized business transaction. According to this Section, a civil servant is liable to be punished if:

- (1) he or she engages in any unauthorized business in his or other's name or in partnership;
- (2) he or she engages in any unauthorized bidding in an auction in his or other's name or in partnership;
- (3) he or she becomes partner or investor in a firm or company not authorized by law; or
- (4) he or she acquires immovable property, without prior information to His Majesty's Government, in excess of his requirement for residence of his family and his dependants.

Punishment

A person guilty under this Section is liable to be punished by way of imprisonment from 1 year to 3 years or fine or both depending on the severity of crime. In addition the property so acquired shall be confiscated and shall be deposited in consolidated fund of His Majesty's Government.

Section 11 talks of prohibition and punishment for misrepresentation of official position, power or privilege. According to this Section a civil servant is liable to be punished if:

- (1) he or she misrepresents and misleads by claiming to be a holder of power and position which he or she does not have and exercises or attempts to exercise such power and position, or
- (2) he or she moves around using or exhibiting the uniform, emblem or evidence of any official post which he or she does not have, or
- (3) he or she moves around using or exhibiting the thing of similar kind with a bad intention of making people believe in them as a uniform, emblem or evidence of any official post.

Punishment

A person guilty under this Section is liable to be punished by way of imprisonment from 2 years to 4 years or fine or both depending on the severity of crime.

Section 12 talks of prohibition and punishment for misrepresentation of qualification, name, etc for official position. According to this Section a civil servant is liable to be punished if he or she misrepresents educational qualification, name, ancestry, age, address, caste, citizenship or disqualification with an objective of acquiring or holding on to an official position.

Punishment

A person guilty under this Section is liable to be punished by way of imprisonment from 2 years to 6 years or fine or both depending on the severity of crime.

Section 13 talks of prohibition and punishment for misuse, waste, loss or misappropriation of national property, public property or any other property under his or her responsibility. According to this Section a civil servant is liable to be punished if he or she, while doing his official duty or any act related with official duty:

- (1) negligently, fraudulently or *malafide* misuses, misappropriates, wastes, wrongfully disposes or uses for personal benefit or attempts to do so; or
- (2) causes others to negligently, fraudulently or *malafide* misuse, misappropriate, waste, wrongfully dispose or use for personal benefit or attempts to do so;

Any national or public property or any property of His Majesty, His Majesty's Government or any government recognized institution placed under his control or management.

Punishment

A person guilty under this Section is liable to be punished by way of imprisonment from 1 year to 5 years or fine or both depending on the severity of crime. In addition the property misused, misappropriated or wasted under this Section shall be recovered from the person guilty under this Section.

Section 14 talks of prohibition and punishment for using illegal pressure. According to this Section, a person (including a civil servant) is liable to be punished if he or she uses or attempts to use any kind of illegal pressure to make a civil servant do any act that is prohibited under this Act. Illegal pressure here includes threat to life, causing loss to property, or causing loss to the reputation.

Punishment

A person guilty under this Section is liable to be punished by way of imprisonment from 4 year to 8 years or fine or both depending on the severity of crime.

Section 14(a) makes a provision for addition of five years imprisonment over and above the punishment prescribed for each offence of corruption in this Act if the offender is a civil servant of special class.

Section 15 makes a special provision for liability of a civil servant for his unaccounted property. This Section says that a civil servant accused of an offence under this Act shall be presumed to have committed an offence of corruption if he or she is found to be in possession of unaccounted property. A judgement holding him guilty of taking bribe in an offence under this Act on the ground of possession of unaccounted property shall not be void.

Section 16 prohibits and punishes a person including civil servant for causing illegal obstruction in investigation or prosecution under this Act.

Punishment

A person guilty under this Section is liable to be punished by way of imprisonment from 6 months to 2 years or fine or both depending on the severity of crime.

Section 16 (a) talks of punishment to an accomplice of an offence under this Act. Section 16(b) talks of punishments for lodging malicious complaint against a civil servant under this Act and Section 16 (c) provides for confiscation of any property acquired by a civil servant or his family or any other person in an offence under this Act.

Investigation and Prosecution

The Commission (including an authority to which power has been delegated) has the power to investigate the charge of corruption either on a formal complaint or on its own. In the preliminary investigation the matter is investigated in strict confidence.

If the preliminary investigation establish a *prima facie* case, the Commission has the power to take the statement from the accused and other concerned persons on the matter.

The Commission may issue a warrant for arrest and detention against an accused if it feels that he or she is likely to destroy, hide or tamper with the necessary evidence or obstruct the process of investigation. The Commission has the power to keep an accused under detention up to two months at a time with the prior approval of the Appellate Court¹. The detention for investigation shall not in any case exceed six months.

The Commission has the power to prosecute or cause the concerned department of His Majesty's Government to prosecute such an accused in the court of law if it finds reasonable grounds to believe in commission of an offence of corruption.

A civil servant is automatically suspended from his or her duty during the time:

- (1) he or she is kept under detention by the Commission for investigation.
- (2) he or she is kept under detention for prosecution by court of law.
- (3) corruption case remains pending in the court of law.

The Commission is basically acting as an ombudsman. It has a right to investigate the abuse of authority by a public servant including civil servant. If the abuse of authority relates to improper exercise of power it sends the matter to the concerned Minister for appropriate action. If the abuse is related to corruption the Commission has the power to prosecute such an accused person in court of law. The Commission itself does not give any judgement or punishment in any case as such.

¹ Appellate Court in Nepal is like a Circuit Court in United States of America.

DISCLOSURE OF INFORMATION

Overview

Disclosure of confidential information has long been considered an unethical, if not an illegal, act. No public officer should, without proper authorization, disclose confidential information concerning affairs of the state. At the same time a civil servant should not withhold public information illegally. He is expected to respect and appreciate the right to information of a citizen. Hence a civil servant should be well informed and well guided by a clear standard of law on requirements of disclosure related laws of the State. In Nepal the Secrecy of Documents Act 2039 B.S. (hereinafter called the Act) regulates the matters relating to disclosure of official documents classified as confidential and secret. *It may, however, be noted that the Act has not yet been enforced by His Majesty's Government. No Rules have been promulgated under this Act and therefore the criteria for classification of documents remains undefined.*

Section 3 of the Act provides for the classification of the confidential official documents into three categories. They are: 1. *Strictly Forbidden Documents*, 2. *Very Confidential Documents*, and 3. *Confidential Documents*. The Section also says that the documents other than a classified one shall not be treated as confidential. Hence a civil servant is under an obligation not to disclose the classified document. He may however provide information on unclassified document according to procedure established by law.

All classified documents need to be categorized and stamped accordingly for the purpose of prior warning.

Strictly Forbidden Documents

A Strictly Forbidden Document cannot be disclosed to any person without the authority of His Majesty's Government. A Strictly Forbidden Document must be kept secret for at least 30 years with the extension of embargo available for additional period up to 30 years at a time. These documents need to be kept officially sealed.

Very Confidential Documents

A Very Confidential Document cannot be disclosed to any person without the authority of His Majesty's Government. A very confidential document must be kept secret for at least 20 years with the extension of embargo for additional period up to 10 years at a time. These documents need to be kept officially sealed.

Confidential Documents

A Confidential Document cannot be disclosed to any person without the authority of His Majesty's Government. A Confidential Document shall remain secret up to 5 years. These documents need to be kept in closed envelope at the time of transfer from one place to another place.

Punishment

A person (including civil servant), depending on the severity of crime, is liable to be punished for unauthorized disclosure of classified document as follows:

- (1) For disclosure of Strictly Forbidden Document a person may be punished from 10 years to 15 years or fine up to Rupees fifty thousand or both.*
- (2) For disclosure of Very Confidential Document a person may be punished from 5 years to 10 years or fine up to Rupees twenty five thousand or both.*
- (3) For disclosure of Confidential Document a person may be punished from 1 year to 5 years or fine up to Rupees ten thousand or both.*

A civil servant held guilty and punished for disclosure of any of the classified document shall be presumed to have committed an immoral crime and shall automatically stand dismissed from his service with a permanent disqualification for future employment in any civil service.

LEAKAGE OF GOVERNMENT REVENUE

Overview

It has long been considered unethical for any civil servant to knowingly engage in any act or omission that leads to leakage of Government revenue. Leakage of Government Revenue (control and investigation) Act 2052 B.S. (hereinafter called the Act) specifically deals with this problem. Section 3 of the Act generally prohibit a person (including a civil servant) from:

- (1) leaking Government revenue;
- (2) causing any one to leak Government revenue;
- (3) attempting to leak Government revenue;
- (4) assisting a civil servant (revenue official) in any manner to do any above act;
or
- (5) acting as an accomplice in any of the above acts.

The legal obligation imposed by Section 3 of the Act is generally applicable to all the citizens of Nepal including civil servants.

Section 5 of the Act declares it to be an offense of corruption if any civil servant causes leakage of Government revenue or assists any person in any way to cause leakage of Government revenue. A person will be liable for such act irrespective of the fact whether he receives any illegal benefit or not.

Definition of Leakage of Government Revenue

Section 4 of the Act has defined the scope of the activities falling under the offense of Leakage of Government revenue. The following acts fall in the definition of the offense of leakage of Government revenues:

- (1) Doing any thing with the intention of evading revenue payment or paying less than what is due;
- (2) Non-payment or payment of less revenue with or without misrepresentation of facts in audit and accounts papers, report or any other paper;
- (3) Evasion or attempt to evade custom duty payable for import or export of any goods;
- (4) Evasion of revenue payment in import export by engaging in any industry, trade or profession registered in any other person's name or not disclosing the name of the foreign company or agency for which he or she worked.
- (5) Unauthorized obstruction in official duty of revenue officials or exercise of improper influence on the revenue officials to avoid payment of revenue or to pay less than what is due or to attempt to do so.

- (6) Changing the amount payable as revenue to His Majesty's Government by taking the help of an official in the concerned revenue office.

Definition of Revenue

Revenue has been defined under Section 2 (a) of the Act. Revenue includes any custom duty, excise duty, income tax, entertainment tax, hotel tax, sales tax, vehicle tax, rent tax, contract tax and property tax or any other tax payable under the existing law of Nepal.

Punishment

If a civil servant, as a tax payer or as a person simpliciter, is guilty of an offence of leakage of Government revenue, he or she may be punished by way of fine up to double the amount of revenue leakage and imprisonment up to three years, depending upon severity of crime.

If a civil servant (who is revenue official) is guilty of an offense under the Act for corruption, he or she shall be liable for departmental action by the Revenue Investigation Department under Civil Service Act. In addition he or she shall be liable to be prosecuted for corruption. A revenue official guilty of corruption shall be punished by way of fine up to double the amount of revenue leakage involved in the offense and punishment up to two years depending upon the severity of crime.

MODEL CODE OF CONDUCT FOR CIVIL SERVANTS

Overview

This chapter deals with a model code of conduct. This is an improved version of code of conduct for civil servants. This chapter provides a model code of conduct for replacement of existing code of conduct for civil servants in chapter 7 of the existing Civil Service Act. This model code include general principles of code of conduct, specific topics of code of conduct, and some model rules (details of the standard) for incorporation in Civil Service Rules.

GENERAL PRINCIPLES OF CODE OF CONDUCT

1. The following general principles of code of conduct apply to every civil servant. Where a situation is not covered by the standards set forth in this code, a civil servant shall apply the principles set forth in this Section in determining whether his or her conduct is proper. The general principles shall be used as guidance for the interpretation of standards of conduct prescribed in specific headings and shall supplement the code of conduct in specific cases.
2. The role of civil service in the existing political setup of The Constitution of the Kingdom of Nepal 2047 B.S. (hereinafter called the Constitution) has to be understood in the context of parliamentary system of government, constitutional monarchy, independence of judiciary, rule of law and popular sovereignty.
3. The constitutional role of civil service in Nepal is to assist the duly constituted Government, of whatever political complexion, in formulating policies of the Government, carrying out the decisions of the Government and in administering public services for which the Government is responsible.
4. The civil servants owe their loyalty to duly constituted His Majesty's Government. His Majesty's Government is accountable to the Parliament and People for the good governance of the Kingdom of Nepal.
5. Civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers and to be able to establish the same relationship with those whom they may be required to serve in some future administration. They should comply with their restrictions on political activities. The conduct of civil servants should be such that Ministers and potential future Ministers can be sure that confidence can be freely given, and that the Civil Service will conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the policies of the duly constituted Government.

6. This code should be seen in the context of the duties and responsibilities of Ministers set out in the Constitution and law of the Kingdom of Nepal. Duties of the Ministers include:
 - Accountability to Parliament;
 - The duty to give Parliament and the public as full information as possible about the policies, decisions and actions of the Government and not to knowingly mislead the Parliament and the Public;
 - The duty not to use public resources for party political purposes, to uphold and respect the political impartiality of the civil service and not to ask civil servants to act in any way that would conflict with the Constitution, law and the code of conduct of civil servants;
 - The duty to give fair consideration and due weight to informed and impartial advice from civil servants before reaching any decision;
 - The duty to comply with the Constitution, law, including, international law and treaty obligation and to uphold the administration of justice.

7. Civil servant should serve the duly constituted Government without compromising the standards set by the code of conduct. While serving the Government, a civil servant shall keep in mind the following basic principles of his official responsibility.
 - The civil servant is accountable to the Minister as long as he or she acts within the bounds of the Constitution and law. A civil servant has no right to disobey the Minister acting within the limits laid down by law. A civil servant should give honest and impartial advice to the Ministers, without fear or favor, and make all information relevant to a decision available to the Ministers. They should not deceive or knowingly mislead Ministers, Parliament, or the public.
 - A civil servant has a duty to comply with the Constitution, law and treaty obligations in the process of carrying out his official duty.
 - A civil servant is the servant of the Government and the people and he holds the post in public trust. The authority and the resources at his disposal belong to the people and the elected Government and should always be used for public service and not for private gain.
 - A civil servant shall always act with honesty, impartiality and diligence and without any vested interest.

8. A civil servant should not seek to frustrate the policies and decisions of the Government simply because of difference of opinion on policy issues. A civil servant shall either convince the Government to accept his point of view or abide by the

decision of the Government. A civil servant who does not agree with the Minister on purely policy matter is expected to resign from the post.

PROTECTION OF A CIVIL SERVANT FROM UNDUE ORDERS OF A MINISTER OR HIS SUPERIOR OFFICER⁵

Where a civil servant believes that he is being asked by a Minister or his superior to act in a way which:

- Is unconstitutional or illegal;
- Is against the code of conduct; or
- Is unethical or immoral in the given context;

He or she should report the matter to the Ethics Committee⁶ in writing as per the procedure laid down in this Code. It shall be the duty of the committee to issue instruction on the issue raised by the civil servant as soon as possible. He or she shall not be liable for any breach of code of conduct when he or she refuses to act pending decision by the Committee or acts according to the instruction of the Committee on the matter.

CODE OF CONDUCT

(The following standards of conduct should be treated as a supplement to the binding conduct laid down by related statutes and the standards laid down by general principles. The following standards of conduct do not derogate the requirement of specific law or general principles)

1. PUNCTUALITY AND REGULARITY

A civil servant shall be punctual and regular in his attendance of the office in accordance with the time schedule specified by His Majesty's Government from time to time. To the best possible extent he or she shall not remain absent from his duty without prior approval of his leave of absence. A civil servant shall inform the reasons for absence from his official duty and shall take retrospective approval of leave in cases where he or she had to remain absent for unforeseen cause.

⁵ In the existing laws there is no provision for an authoritative institution to entertain inquiries of a civil servant in the matter of code of conduct. A need for an institution with the power to issue an instruction to a civil servant faced with a difficult situation has been strongly felt.

⁶ Ethics Committee does not exist under the existing set up of Nepal. It is a proposed institution. The Ethics Commission in the United States inspires the idea of the proposed Ethics Committee. The detail work on its organizational structure, scope of work, rules of procedure needs to be worked out. Perhaps a useful guide to this task may be obtained from Ethics Office in United States.

2. DISCIPLINE AND OBEDIENCE

- (1) A civil servant shall carry out his official responsibility with diligence, honesty and in full discipline.
- (2) A civil servant shall promptly carry out the orders of his superior in relation to his official responsibility.
- (3) A civil servant shall show proper respect to his senior officials and behave properly with junior officials.
- (4) A civil servant shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.
- (5) A civil servant shall not use or try to use political or other inappropriate influences against any other civil servant with an intention of serving his vested personal interest.

3. POLITICAL ACTIVITY⁷

A civil servant shall not take part in political activity. Political activity, for the purpose of this code of conduct shall mean:

- being a member of a party organization;
- holding an office in a party organization;
- being an employee of a party organization;
- speaking in public on matters of political controversy;
- expressing views on matters of political controversy to the press, books, articles or leaflets;
- taking part in demonstration organized by political organization;
- contributing any fund to a political organization or helping in any way to raise fund for political organization or a candidate for election in Parliament or local government;
- being a candidate or canvassing on behalf of any candidate for any election to parliament or local government;
- taking part in surveys or research projects that deal with attitudes or opinions on political matters; or
- engaging in any other activity that goes against the impartial image of civil service.

⁷ One of the major problems in enforcement of code of conduct has been politicization of bureaucracy. During the interview with selected civil servant, the interviewees opined that provision of ban on political activity (simply as a requirement of code of conduct) may not be effective. Political parties deliberately tolerate and often promote participation of civil servants in their political activities. It would be very difficult for heads of the department to take action against his or her staff. The Ministers often protect politically active civil servant. Hence a suggestion has been made for the enactment of a specific statute to criminalize political activity of a civil servant. It is also suggested that such a statute should confer the right to any citizen to file a suit against such civil servant.

Provided that following activity of a civil servant shall not be treated as a political activity for the purpose of this Act:

- To take part in union activities organized by civil service unions. Elected union representatives may comment on Government policy when representing legitimate interest of the civil service union or their members, but in doing so they must make it clear that they are expressing views as representatives of the union and not as civil servants;
- To be part of an audience in any public speech of a political party or a leader.

4. CRITICISM OF GOVERNMENT

(1) A civil servant shall neither publish any article, nor inform the press, nor publicly broadcast through radio or television, nor give any public speech, nor issue public statement in any manner:

- that will go against any public policy of His Majesty's Government;
- that is likely to disturb the cordial relation of His Majesty's Government *vis a vis* the people; or
- that is likely to disturb the relation of His Majesty's Government with any foreign Government.

A civil servant shall not do any of the above acts either in his name, fake name or anonymous.

(3) Provided that nothing in the Sub-section (1) of this Section shall prohibit a civil servant from publishing or broadcasting an article that do not go against the existing law or public policy of His Majesty's Government.

5. CONTEMPT OF PARLIAMENT*

A civil servant shall always deal with parliament in high regard. A civil servant shall not make any public statement or publish any article or do any act in the performance of official duty or otherwise which would be contempt of parliament. Contempt of parliament by breach of parliamentary privilege or by any form of scandalizing act is strictly prohibited.

* Contempt of Parliament is caused if any person does any act in violation of the privilege of the Parliament as provided in the Constitution and the Rules of Parliamentary procedure.

6. CONTEMPT OF COURT⁹

A civil servant shall always deal with courts of law in high regard. A civil servant shall not make any public statement or publish any article or do any act in the performance of official duty or otherwise which would be contempt of court. Contempt of court by causing any obstruction in proceedings of the court or by any form of scandalizing act is strictly prohibited.

7. UNAUTHORIZED COMMITMENTS OR PROMISES

A civil servant shall not make any unauthorized commitments or promises of any kind purporting to bind the Government.

8. ABUSE OR AUTHORITY

A civil servant shall not abuse the authority vested in him by engaging in any act that is improper¹⁰ (as defined in Section 3 of the Abuse of Authority Investigation Commission Act 2048 B.S.) or corrupt¹¹ (as described in chapter 2 of the Anti-corruption Act 2017 B.S.).

⁹ There is no statute which comprehensively defines contempt of court. Enactment of a Contempt of Court Act in line with a Contempt of Court Act of India would be a welcome step. In the absence a statute the court in Nepal usually treats any undue obstruction of judicial process and scandalizing act as contempt of court. Scandalizing act include any writing, action or speech that has the effect of undermining the public confidence in the impartiality and effectiveness of the court.

¹⁰ Section 3 of the Act defines the scope of improper act. According to the Section a civil servant shall be held liable for abuse of power if he or she knowingly or recklessly:

- (1) Refuses to take action that falls within his or her jurisdiction or takes action which do not fall within his or her jurisdiction.
- (2) Failure to follow mandatory procedure at the time of taking any decision or issuing order.
- (3) Exercise of power vested in him or her for the extraneous purpose not authorized by concerned law, decision or order.
- (4) Exercise of his or her discretionary power in an arbitrary or *malafide* manner.
- (5) Unauthorized obstruction in the function of other office, officer or employee or using pressure to compel such office, officer or employee to do illegal act.
- (6) Avoiding one's responsibility by sending a matter within his or her responsibility to other office or officer.
- (7) Failure to abide by the duties of an officer arising from the nature of such office.

¹¹ Section 2 (f) of the Anti-corruption Act 2017 B.S. (hereinafter called the Act) defines the term "Bribe" as any economic benefit by way of cash or kind including amount, fee, premium, award or gift (other than legally payable remuneration, allowance or any other payment). Section 3 of the Act prohibits and punishes a civil servant (or who is to be appointed as a civil servant) from taking, attempting to take or consenting to take any bribe for himself or for others for any official duty or act related with official duty. Section 3 prohibits a civil servant (or who is to be appointed a civil servant) from taking a bribe for any of the following acts.

1. to do or not to do an official duty or any act related to his or her official duty:

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2. for having done or not having done any official duty or any act related to his or her official duty;
 3. to give or not to give any favor in performing any official duty or any act related to his or her official duty;
 4. for having favored or denied any favor in performing any official duty or any act related to his or her official duty;
 5. to disfavor or not to disfavor any person in performing any official duty or any act related to his or her official duty; and
 6. to promise to do some thing though he or she does not intend to do or to take any benefit by saying that he did a certain act when he actually did not do.

Remuneration legally permitted for any official act means a salary and allowance a civil servant can legally claim and also includes any other payment allowed for such service.

Section 4 of the Act prohibits and punishes any person (including civil servant) from taking, attempting to take or consenting to take any bribe for himself or for others for any of the following acts.

7. to make a civil servant agree to do or not to do an official duty or any act related to his or her official duty;
8. for making a civil servant agree to do or not to do any official duty or any act related to his or her official duty;
9. to make a civil servant agree to give or not to give any favor in performing any official duty or any act related to his or her official duty;
10. for making a civil servant agree to favor or deny any favor in performing any official duty or any act related to his or her official duty;
11. to make a civil servant agree to disfavor or not to disfavor any person in performing any official duty or any act related to his or her official duty; and
12. for making a civil servant agree to disfavor or not disfavor any person in performing any official duty or an act related to his official duty.

Explanation

A person is presumed to commit an offence under this Section if a civil servant takes bribe for promising to do some thing though he or she does not intend to do or by saying that he did a certain act when he actually did not do.

Remuneration legally permitted for any official act means a salary and allowance a civil servant can legally claim and also includes any other payment allowed for such service.

Section 5 prohibits and punishes a person (includes a civil servant) for inciting any person (includes a civil servant) to engage in a crime under Section 3 or 4. It provides that a person is liable to be punished under Section 5 irrespective of fact whether the offence was committed or not as a result of such incitement.

Section 6 prohibits and punishes a civil servant for taking any thing free of cost or inadequate cost from a person related to his official duty. According to this Section, a civil servant is liable to be punished if:

1. he or she knowingly takes, attempts to take or agrees to take, without the approval of His Majesty's Government, for himself or for others any thing free of cost or inadequate cost or gift, present, award, donation or assistance.
2. from a person who is concerned or likely to be concerned with the functions of his office or his official duty or performance of an act related to his official post or an act about to be performed in relation to such post.

Provided that a civil servant shall not be liable under this Section if he informs His Majesty's Government as soon as possible the receipt of any thing by way of present, gift or assistance from such person.

Section 7 talks of prohibition and punishment related to the performance of an act by a civil servant with a *malafide* intention of causing illegal benefit or illegal loss. According to this Section a civil servant is liable to be punished if:

1. he or she knowingly violates the law.
2. he or she knowingly violates the oath, agreement, contract, or commitment to His Majesty or His Majesty's Government.
3. he or she misuses the governmental authority or privilege.
4. he or she wrongfully acquires such authority or privilege.

with a *malafide* intention of causing unlawful benefit to himself or to others or to cause unlawful loss to the nation, His Majesty, His Majesty's Government, Government recognized organization or any person. It is an offence under this Section to make an attempt to do any of the above things.

Section 9 talks of prohibition and punishment related to the preparation of wrong document or wrong interpretation of document. According to this Section a civil servant, with an official duty to prepare documents or translate documents, is liable to be punished:

- (1) if he prepares a wrong document or makes a wrong translation with a specific bad intention of causing loss to the nation, His Majesty, His Majesty's Government, Government recognized organization, or any other person.
- (2) if he prepares a wrong document or makes a wrong translation with knowledge that the document prepared or translated by him or her is wrong and it might cause loss to the nation, His Majesty, His Majesty's Government, Government recognized organization, or any other person.

Section 9 (a) talks of prohibition and punishment related to the violation of confidentiality of question papers. According to this Section a civil servant is liable to be punished if he violates or causes any other person to violate the confidentiality of a question paper in any manner:

- (1) if it is done with a bad intention of causing unlawful gain to oneself or to any other person, and
- (2) if such violation of confidentiality relate to a question paper for an exam to be conducted by His Majesty's Government, Public Service Commission, or other registered body.

Provided that a concerned authority shall not be held liable if, for special reasons to be specified, it has to open or cause others to open such question paper before the due date.

Section 10 prohibits and punishes a civil servant for engaging in unauthorized business transaction. According to this Section, a civil servant is liable to be punished if:

- (1) he or she engages in any unauthorized business in his or other's name or in partnership.
- (2) he or she bids in any unauthorized auction in his or other's name or in partnership.
- (3) he or she becomes partner or investor in a firm or company not authorized by law or
- (4) he or she acquires immovable property, without prior information to His Majesty's Government, in excess of his requirement for residence of his family and his dependants.

Section 11 talks of prohibition and punishment for misrepresentation of official position, power or privilege. According to this Section a civil servant is liable to be punished if:

- (1) he or she misrepresents and misleads by claiming to be a holder of power and position which he or she do not have and exercises or attempts to exercise such power and position, or
- (2) he or she moves around using or exhibiting the uniform, emblem or evidence of any official post which he or she does not have, or

9. TRANSPARENCY

A civil servant shall maintain transparency in carrying out his official duty unless the law and the policy of His Majesty's Government require him to do such duty in confidentiality. He shall not withhold any public information without the authority of law and shall provide access to any citizen who seeks information according to procedure established by law. A civil servant has a duty to give reasons for his or her decision that adversely affect the rights and liabilities of a citizen.

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- (3) he or she moves around using or exhibiting the thing of similar kind with a bad intention of making people believe in them as a uniform, emblem or evidence of any official post.

Section 12 talks of prohibition and punishment for misrepresentation of qualification, name, etc for official position. According to this Section a civil servant is liable to be punished if he or she misrepresents educational qualification, name, ancestry, age, address, caste, citizenship or disqualification with an objective of acquiring or holding on to an official position.

Section 13 talks of prohibition and punishment for misuse, waste, loss or misappropriation of national property, public property or any other property under his or her responsibility. According to this Section a civil servant is liable to be punished if he or she, while doing his official duty or any act related with official duty:

- (1) negligently, fraudulently or *malafide* misuses, misappropriates, wastes, wrongfully disposes or uses for personal benefit or attempts to do so; or
- (2) causes others to negligently, fraudulently or *malafide* misuse, misappropriate, waste, wrongfully dispose or use for personal benefit or attempts to do so.

Any national or public property or any property of His Majesty, His Majesty's Government or any government recognized institution placed under his control or management.

Section 14 talks of prohibition and punishment for using illegal pressure. According to this Section, a person (including a civil servant) is liable to be punished if he or she uses or attempts to use any kind of illegal pressure to make a civil servant do any act that is prohibited under this Act. Illegal pressure here includes threat to life, causing loss to property, or causing loss to the reputation.

Section 15 makes a special provision for liability of a civil servant for his unaccounted property. This Section says that a civil servant accused of an offence under this Act shall be presumed to have committed an offence of corruption if he or she is found to be in possession of unaccounted property. A judgement holding him guilty of taking bribe in an offence under this Act on the ground of possession of unaccounted property shall not be void.

Section 16 prohibits and punishes a person including civil servant for causing illegal obstruction in investigation or prosecution under this Act.

Section 16 (a) talks of punishment to an accomplice of an offence under this Act. Section 16(b) talks of punishments for lodging malicious complaint against a civil servant under this Act and Section 16 (c) provides for confiscation of any property acquired by a civil servant or his family or any other person in an offence under this Act.

10. EQUAL TREATMENT

A civil servant shall neither deny equal treatment of law nor deny equal opportunity provided by law. He or she shall not discriminate any citizen on the ground of religion, race, sex, caste, tribe, or ideological conviction or any of these in the performance of his or her official duty.

11. OBJECTIVITY IN PERFORMANCE OF OFFICIAL DUTIES

A civil servant shall maintain objectivity in carrying out his or her official duties, including making public appointments, awarding contracts, or recommending any individual for reward or punishment. A civil servant shall make choices strictly on merit and shall not indulge in any form of nepotism, favoritism or biases. A civil servant shall disqualify himself from any decision making process if it involves an issue related to his family members, former employers or close friends.

12. DISCLOSURE OF INFORMATION

- (1) A civil servant must make available an official information in compliance with court order or which is not held in confidence within Government. In providing non-confidential information to a person, the policy and procedure laid down by the concerned authority shall be followed.
- (2) A civil servant shall not disclose directly or indirectly any information acquired or collected by him in the process of carrying out his official duty if:
 - The information is confidential
 - The disclosure of information would be premature and would have the effect of frustrating the policies and plans of the Minister.
 - The disclosure of such information is prohibited by law

Provided that the disclosure of such information with the prior approval of His Majesty's Government or a competent authority shall not be considered as breach of this code of conduct.

- (3) Prohibition on disclosure of information under this Section shall continue to bind a civil servant even after the termination of his service by any means including retirement, resignation or dismissal.

Disclosure of information for the purpose of this Section includes passing on the information materials or communication of information to any unauthorized official or private citizen or press, publication of such information in any article, memoir, paper, magazine etc.

13. WHISTLE BLOWING

A civil servant shall report to the appropriate authorities evidence of criminal or unlawful activity by others and may also report, according to departmental procedures, if he or she becomes aware of any wastage or misuse of public property or any other breach of this code or is required to act in a way which, for him or her, raises an issue of conscience.

A civil servant, acting *bonafide* in reporting such unlawful activity, shall not be booked by a department even if the report later turns out to be baseless. The authority shall keep the name of the reporting civil servant confidential and shall not be disclosed without his written permission.

A civil servant reporting any such illegal activity by a fellow civil servant within the department shall be given additional point on the basis of specified criteria for the purpose of evaluating his performance in his official duty.

14. DUTY TO REPORT

Civil servants who become bankrupt or insolvent must report the fact to their office or the department. Civil servants must let their department or office know if he or she is arrested and refused bail, criminally prosecuted or convicted of any criminal offence. This does not apply to traffic offence unless an official car was involved, or the penalty included imprisonment or disqualification from driving.

15. GIFTS FROM OUTSIDE SOURCES

A civil servant shall not, directly or indirectly, solicit or accept a gift from a prohibited source or given because of the civil servant's official position.

For purposes of this part, the following definitions shall apply:

(a) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.

(b) *Prohibited source* means any person who:

- (1) Is seeking official action by the civil servant's department;
- (2) Does business or seeks to do business with the civil servant's department;
- (3) Conducts activities regulated by the civil servant's department;
- (4) Has interests that may be substantially affected by performance or nonperformance of the civil servant's official duties; or
- (5) Is an organization a majority of whose members are described in paragraphs (b) (1) through (4) of this Section.

(d) A gift is *solicited or accepted because of the civil servant's official position* if it is from a person other than a civil servant and would not have been solicited, offered, or given had the civil servant not held his position as an officer of the Government.

(f) A gift, which is *solicited or accepted*, indirectly includes a gift:

- (1) Given with the civil servant's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the civil servant, or
- (2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the civil servant.

Proper disposition of prohibited gifts

A civil servant who has received a gift that cannot be accepted under this provision shall, unless the gift is accepted by a department acting under specific statutory authority:

- (1) Return any tangible item to the donor or pay the donor its market value. A civil servant who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality
- (2) Return any tangible item to the donor or pay the donor its market value. A civil servant who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality.
- (3) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the civil servant's supervisor or ethics office, be given to an appropriate charity, shared within the recipient's office, or destroyed.
- (4) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value.
- (5) A department may authorize disposition or return of gifts at Government expense.
- (6) A civil servant who, on his own initiative, promptly complies with the requirements of this Section will not be deemed to have improperly accepted an unsolicited gift. A civil servant who promptly consults Ethics Office to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics office, returns the gift or otherwise disposes of the gift in accordance with this Section, will be considered to have complied with the requirements of this Section on his own initiative.

16. GIFTS BETWEEN CIVIL SERVANTS

A civil servant shall not, directly or indirectly, give a gift to or make a donation toward a gift for an official superior, or solicit a contribution from another civil servant for a gift to either his own or the other civil servant's official superior with an intention of influencing the exercise of official duty by such official superior.

A civil servant shall not, directly or indirectly, accept a gift from a civil servant receiving less pay than him unless:

- (1) The two civil servants are not in a subordinate-official superior relationship; and
- (2) There is a personal relationship between the two civil servants that would justify the gift.

For purposes of this subpart, the following definitions shall apply:

(a) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.

(b) A gift, which is *solicited or accepted*, indirectly includes a gift:

- (1) Given with the civil servant's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the civil servant, or
- (2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the civil servant.
- (3) Given with the civil servant's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or
- (4) Given by a person other than the civil servant under circumstances where the civil servant has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) *Official superior* means any other civil servant, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the civil servant's official duties or those of any other official superior of the civil servant. For purposes of this subpart, a civil servant is considered to be the subordinate of any of his official superiors.

17. PROHIBITION ON GIFTS FROM FOREIGN GOVERNMENT

A civil servant or a member of his family shall not solicit or accept any kind of gift or present, take loan or demand donation from any foreign Government or foreign agency or

foreign entity if it is likely to prejudice the official duty in any way. A prior approval of His Majesty's Government must be taken to accept such gift, present and donation or take loan.

If a civil servant receives any gift or present from a foreign government or its representative, he or she shall report the matter to His Majesty's Government and shall do as per the decision of His Majesty's Government.

18. PROHIBITION ON BUSINESS, COMPANY AND OUTSIDE EMPLOYMENT

A civil servant shall not do following things without the prior approval of His Majesty's Government:

- a. to participate in the establishment, registration or management of any bank or company;
- b. to engage in any business or profession which needs to be legally registered; or
- c. to accept any kind of outside employment.

Notwithstanding any thing in Sub-section (1) of this Section, a civil servant may engage in any part time work which do not conflict with his or her official duty or engage in any work of art, literature or science which do not contradict the public policy of His Majesty's Government.

Civil servant or his family members may freely invest in shareholdings and other securities unless investment in stocks of such company involves conflict of interest with his or her official duty. A civil servant must disclose his investments to the concerned authority and shall hold, dispose or manage such interest as per instruction of such concerned authority.

19. EMPLOYMENT AFTER TERMINATION OF CIVIL SERVICE

A gazette civil servant shall not take any employment from any person, firm or company within two years of termination of his or her service without informing the concerned authority. The concerned authority shall have the authority to issue necessary directions in such case to ensure the impartiality and integrity of civil service.

A civil servant shall not take any employment from any foreign government, foreign agency or foreign organization within two years of the termination of his service without the prior approval of His Majesty's Government.

20. EMPLOYMENT, GIFT, BENEFIT, AWARD ETC. FROM FOREIGN GOVERNMENT, FOREIGN AGENCY, FOREIGN COMPANY

- (1) A civil servant shall not accept any employment with the foreign government or its representative organization.
- (2) A civil servant shall not accept any gift, benefit (including travel), award or medal from any foreign government without the approval of His Majesty's Government.
- (3) A civil servant shall not accept any employment from any foreign agency, foreign company or organization without the prior approval of His Majesty's Government.
- (4) A civil servant shall not accept any gift, benefit, award, or medal from any foreign agency, organization or company without the approval of His Majesty's Government.

21. CONFLICT OF INTEREST

- (1) A civil servant shall not hold directly or indirectly any financial interest that conflict with the conscientious performance of his or her duty. He or she shall have a general duty to declare an existing or likely conflict of interest, financial or otherwise, in any of his official duty to the chief of his department. He has a duty to abstain from taking part in the decision making process in any matter that involves his or her conflict of interest.
- (2) Department or the office must not, unless the waiver has been given by His Majesty's Government, award a contract to:
 - (a) Any civil servant in the department or the office;
 - (b) Any partnership of which a civil servant in the department or the office is a member;
 - (c) Any company where a civil servant in the department or the office is a director (except as a nominee of the department or the office) or a majority share holder.
- (3) A civil servant shall not bid for any tender or purchase of any Government property where he or she has special knowledge about the condition of the goods because of his official duty or has been officially associated with the disposal arrangement or at a discount rate that is not available to the members of the public.

For the purpose of this part:

Hold directly or indirectly means holding of any interest, including financial, by a civil servant personally or through his wife or dependant children. It also includes holding of financial interest through a company controlled by him or whose majority shares are owned by him or through a subsidiary company controlled by such company or through a partnership firm in which he is a stake holder as a general partner.

Financial interest means any interest by way of investment in stock, shares, equity, bond, property or any other valuable interest. It also includes any kind of compensated employment.

Conflict of interest means the existence of an interest separate and independent of the official interest in performance of an official function and such unofficial interest of a civil servant cannot be served without prejudice to official interest involved. It shall not constitute a conflict of interest if some independent interest of a civil servant has been served as an incidental effect of the official action in question.

Decision making process means any thing done in the process of reaching a decision and it includes investigation, recommendation, advice, approval or disapproval of any action in a particular matter.

Duty to abstain means not only keeping away himself from decision making process but it also means keeping himself away from direct and active supervision of the participation of a subordinate in the matter.

Waiver

A department or the office shall not grant a waiver under clause (b) of general standards unless the department determines that:

- (a) the interest of the civil servant involved is too remote or too inconsequential to affect the integrity of the services of the civil servants to whom the waivers would apply; or
- (b) there is no other alternative person, firm or company to do that job and that giving of such waiver would be in public interest.

Divestiture

A civil servant may himself voluntarily divest of all those interest which make him ineligible to participate in decision making process in a particular matter.

A civil servant may be directed by a department to divest himself of all those financial interests the continued holding of which is prohibited by any law or involve a substantial conflict with the mission or interest of his department.

A person who has complied with the requirements of divestiture shall not be held ineligible from decision making process in a particular matter or day to day official duty in question.

Whenever a department or an office directs divestiture of a financial interest, the civil servant shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the office's direction. Except in cases of unusual hardship, as determined by the office, a reasonable period shall not exceed 90 days from the date divestiture is first directed.

However, as long as the employee continues to hold the financial interest, he remains subject to any restrictions imposed by this subpart.

22. DUTY NOT TO CAUSE LOSS TO HIS MAJESTY'S GOVERNMENT

A civil servant shall not cause any loss to His Majesty's Government or its office by any act of negligence or indiscipline or intentionally wrongful conduct. A wrongful conduct in this clause includes evasion of tax by himself or assisting any other person to evade the tax in any form.

23. USE OF GOVERNMENT PROPERTY

A civil servant has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

24. USE OF PUBLIC OFFICE FOR PRIVATE GAIN

A civil servant shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives or persons with whom the civil servant is affiliated in a non-governmental capacity.

25. USE OF NONPUBLIC INFORMATION.

A civil servant shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

26. PROHIBITION ON ELECTION ACTIVITIES

A civil servant shall not take part in the election for any political post. A civil servant shall neither solicit vote for any candidate in such election nor try to influence in the election in any manner.

Provided that a civil servant shall be free to exercise his voting right without any disclosure of his intention or exercise of vote in favor of any candidate.

27. PROHIBITION ON DEMONSTRATION AND STRIKES

A civil servant shall not engage in any demonstration or strike which would:

- undermine the sovereignty and integrity of the Kingdom of Nepal;
- undermine the peace and security of the country;
- spoil the foreign relation of Nepal;
- undermine the public decency or morality;
- lead to disrespect of court decisions or contempt of court;
- jeopardize the harmonious relations subsisting among the peoples of –various castes, tribes, religion, regions or communities;
- create communal misunderstandings or tensions; or
- incite any person to engage in any crime.

A civil servant shall not engage in any activity with an intention of inciting others to commit above offences.

28. PROHIBITION ON PICKETING, STRIKES OR DETENTION

A civil servant shall not obstruct any office or its personnel from carrying out official duty by any act of picketing or (pen down) strike. He or she shall not put any kind of pressure on an officer that would cause him mental or physical torture. Nor he or she shall incite others to engage in above activities.

29. PROHIBITION OF REPRESENTATION

A civil servant shall not make any representation on behalf of any person or group before any officer or department. A civil servant however shall be free to make a petition in person or through his appointed attorney before a concerned official or department for his personal cause.

Provided that this Act shall not prevent a civil servant from representing a His Majesty's Government recognized civil servants union or carrying out his official duties.

30. CIVIL SERVICE UNION

- (1) In order to promote and protect professional right and interest, non-gazette and non-classified servants may constitute a national union of such civil servants.
- (2) A civil servant shall not be entitled to any special leave or privilege by virtue of holding any office in such union.
- (3) The formation and management of such union shall be governed by existing law.

31. FINANCIAL DISCLOSURE

- (1) A civil servant must submit his property statement in a format prescribed by Civil Service Rules within 30 days of his appointment to the service. The disclosure shall include all the immovable and movable property and interest arising there from. The disclosure shall also describe the source of acquisition of such property. The financial disclosure shall include the statement of property owned by the wife, sons and unmarried daughters of such civil servant.

Provided that the statement of financial disclosure of the property owned by any member of family who has been legally separated shall not be mandatory.

- (2) A civil servant shall inform the concerned authority within 30 days of any new acquisition of a property if:

Such property is worth more than Rs. 50,000/-; or
Such property is an immovable property.

- (3) A civil servant shall be required to take a clearance from the concerned authority at the time of his termination of his service. Clearance shall include payment of tax and disclosure of source for acquisition of the property held by him and his family members.

32. CONDUCT APPROPRIATE TO HIS POST AND SERVICE

A civil servant shall act according to discipline and code of conduct appropriate to his post or service. He or she shall dress according to the dignity of his post and shall not be under the influence of drugs, alcohol or any other intoxication during the time of his official duty.

A civil servant shall not engage or cause to engage in bigamy, child marriage, incompatible marriage prohibited by law.

33. DUTY TO HANDOVER OR TAKEOVER

A civil servant has a duty to hand over the official cash, paper or other material to the specified officer within the time period specified there for and the specified officer shall also takeover the official cash, paper or material within the time period specified there for.

STRATEGY FOR MAKING CODE OF CONDUCT EFFECTIVE AND MEANINGFUL

Overview

One of the important pre-conditions for existence of good governance in any country is the enforcement of a comprehensive and effective code of conduct for civil servants. In fact the concept of code of conduct for civil servants in Nepal is not a new concept. It is at least as old as the Civil Service Rules 2021 B.S. (promulgated under Civil Service Act 2013 B.S.). The code of conduct provided in Civil Service Rules 2021 B.S. was supplemented by many other laws. These laws criminalized certain acts or omissions which also amounted to breach of code of conduct under Civil Service Rules.

After the introduction of multi-party democracy a new constitution was promulgated. Under the new constitution a new Civil Service Act was enacted in 2049 B.S and Civil Service Rules was promulgated in 2050 B.S. These new laws did not introduce any thing new in the code of conduct. It was more or less a copy of the code of conduct provided in pre-existing Civil Service Rules. The new constitution also created a new independent constitutional body to act as an ombudsman against the abuse of power by public servants including civil servants. This body is known as the Commission for Investigation of Abuse of Authority. This body was to investigate the abuse of authority (improper exercise of power) and forward the case to concerned Minister for appropriate action. If the abuse of authority involved corruption then the Commission had the sole power to prosecute such a person under Anti-corruption Act. On the whole the concept of code of conduct was not a new concept in Nepal.

Problems

There were however some serious problems in effective implementation and compliance of the existing code of conduct. Some of the problems were as follows:

1. There was no compilation of laws and rules relating to code of conduct. The code of conduct was scattered in different legal instruments. There was no easy reference material for code of conduct.
2. The existing code of conduct was not properly detailed and they lacked supporting specific laws.
3. There was no effective mechanism for protection of honest civil servants from higher ups including Ministers. There was no procedure to protect himself from an illegal order of a Minister or his senior officer.

4. There was no specific institution such as Ethics Commission in United States to take up ethics awareness, promotion and support program. There was no program for training and awareness of matters related to code of conduct.
5. There was no proper monitoring system for compliance of the code of conduct.
6. Civil service exam conducted by Public Service Commission or the Department did not emphasize on the code of conduct.
7. There was no code of conduct for Ministers and Members of Parliament. Ethics begins from top and it did not happen in Nepal.
8. Politicization of bureaucracy started right after the introduction of multi-party democracy. There were no effective legal provisions to check induction of party workers as temporary civil servants or direct appointees of the Government.
9. The Ministers who controlled these civil servants did not have clarity of the principles governing the relation between Minister and civil servants in the context of constitutional monarchy and parliamentary system of Government.

Recommendations

1. Creation of an Ethics Committee

An office charged with responsibility of managing ethics in governance at the civil service level should be created. This office should be stationed in the Ministry of Public Administration. The role of this office should be to carryout the programs and policy decisions of the Ethics Committee headed by a person to be appointed by His Majesty the King on the recommendation of the Cabinet. The chairman of the committee should be a person of independent background, preferably a retired Supreme Court judge. The Committee may include retired members of civil service, experts on public administration and an ex-officio member, the chief secretary to the Government or his representative. These appointed members could be independent people from the field of law, ex-judges or other recognized public figures. The head of the office should be a person appointed by His Majesty's Government on the recommendation of the Ethics Committee. The head of the Ethics Office must be made the member secretary of the Ethics Committee.

The central mission of the Ethics Office must be prevention of and not punishment for violation of code of conduct by civil servant. Hence it will not act as an investigating office for each case of complaint. The enforcement of code of conduct would be basically a responsibility of the concerned department.

As an office for promotion of ethics in governance at the civil service level, it would basically concentrate on following areas:

- (1) Preparation of policies and programs on promotion of ethics in governance at civil service level;
- (2) Carrying out research and publications on the matters related to code of conduct;
- (3) Organizing training and awareness program on code of conduct of civil servants;
- (4) Providing advice to a civil servant's inquiry about code of conduct issues;
- (5) Assisting Public Service Commission on the conduct of exam on code of conduct for civil servants;
- (6) Assisting different departments to organize training program and interpretation of code of conduct requirements; and
- (7) Monitoring the compliance of code of conduct requirements such as filing of financial disclosure statements.

2. Ethics Training and Awareness Program

The enactment of ethical standards in to legally binding rules does not by itself ensure their compliance. The enforcement of code of conduct through sanctions needs to be supported by training and awareness programs. The task of organizing training and awareness program needs to be taken up by the proposed Ethics Office. The practice of giving a copy of code of conduct (with explanatory notes) with an appointment letter must be adopted.

3. Enactment of Supporting Legislation

Code of conduct needs to be backed up by specific legislation. These laws need to detail the requirements of the standards of code of conduct. In addition these laws can also criminalize certain acts which amount to violation of code of conduct. Amendment of Patent, Design and Trade Mark Act 2022 B.S and Copy Right Act 2020 B.S. need to be amended to secure the copy right, design, patent and trademark of His Majesty's Government. In England, any work made by civil servant in the course of their employment is Crown copyright. Civil servants must obtain prior permission from their Head of Department or Office Chief Executive before entering into any arrangement regarding the publication of any articles or materials which they have produced as a part of their official duty. For details regarding protection of Crown copyright, reference may be made to the relevant Sections of Copyright, Designs and Patent Act 1988 of U.K.

4. Examination on Code of Conduct

All the civil service exams, conducted by both the Public Service Commission and Department itself, must include ethical code, related laws, punishment and procedure. It will not only give an examinee an opportunity to be aware of the code of conduct but also be aware of the punishments that may follow. Exam must concentrate on case method and emphasize on code of conduct as an applied science.

5. Mandatory Disclosure of Source of Unaccounted Property

Civil Service Act and Rules provide for filing of property statement but the statement do not require the disclosure of source of such property. There must be strong law to deal with unaccounted property of a civil servant. It has merely remained as a formality and no body has time or responsibility to monitor and check the correctness of statement. Civil Service Act must declare any non-disclosure or misrepresentation in financial statement as a serious breach of code of conduct. Proposed Ethics Office could be entrusted with such responsibility to monitor and check the compliance of disclosure requirements.

6. Authority to Issue Supplementary Code of Conduct to Each Department

Civil Service Act and the Rules made thereunder provide the code of conduct generally applicable to all the civil servants. There is no provision which enable each department to issue supplementary code of conduct to address special need of each department. The Act may be amended to address this gap in the law.

7. Authority to Issue Corrective Action

Civil Service Act and the Rules made there under provide for punitive action only. The law does not provide for the concerned authority to issue order for corrective action. There are many cases where the appropriate action could be corrective and not punitive. Corrective action could include any action necessary to remedy a past violation or prevent a continuing violation, including but not limited to restitution, change of assignment, disqualification, termination of an activity, counseling, compensation etc.

8. Enforcement of Code of Conduct for Ministers and Members of Parliament

Ethics by its nature begins from the top. The effective enforcement of code of conduct at the civil service level will not be possible as long as its political masters are not brought under a strong code of conduct. Enforcement of code of conduct for Ministers and members of Parliament is a pre-condition for effective compliance of code of conduct for civil servants.

9. Protection of Civil Servants from Undue Orders from Higher Officials or Ministers

A civil servant in Nepal is often under a pressure from Minister, political leader, member of Parliament or his immediate boss to carry out undue order. Until and unless there is an effective system to protect a civil servant from victimization by his immediate boss or political master for refusing to carry out undue and illegal order, it may not be possible to ensure compliance of code of conduct. It is for this reason that this report recommends the creation of Ethics Office under the control and management of Ethics Office.

Provision must be made to see that a civil servant who has engaged in a conduct in good faith reliance on the advice of Ethics office is provided immunity from departmental action. However where a conduct violates a criminal statute, such an advice shall not protect a civil servant from prosecution. However good faith reliance on the advice of the Ethics Office may be taken in to account by the Office of Attorney General in the selection of cases for prosecution. The concept of Ethics Office (derived from U.S) is a new one for Nepal but it will have a strong impact in promoting Ethics Regime. This Office will give the moral responsibility of Ethics in Civil Service to the Leader of Civil Service themselves.

10. Guidelines for the Use of Discretionary Power

His Majesty's Government must prepare a manual for the exercise of discretionary power by a civil servant. It must be prepared in simple language and must incorporate the standards set by case law and statutes.

11. Enactment of Conflict of Interest Act

An amendment needs to be introduced in the Government Contract and Tender Act 2020 B.S. in order to prevent any award of contract or tender to a civil servant or his family member or to a company or firm where in a civil servant has a substantial financial interest. The Act must expressly disqualify a civil servant or his family member or a company or firm where in he or she has a substantial financial interest from bidding any tender or contract to be awarded by His Majesty's Government or its agency.

12. Enactment of Legislation to Criminalize Political Activity

One of the major problems with civil service has been its over politicization. There should be a strong law to prohibit and punish a civil servant for openly engaging in political party activities. Measures must be introduced to enable any person with enough evidence to take the matter to the court for appropriate action. Departmental action against political activity by a civil servant may not be effective. Many civil servants, instead of remaining apolitical, prefer to openly work for political party and get its protection and favor. This kind of legislation might be deterrence to such activities. It will go a long way in promoting the cause of sincere and genuine civil servants.

TAB I

REPUBLIC OF PANAMA
ETHICAL PRINCIPLES FOR PUBLIC SERVANTS

EXECUTIVE DECREE No. 13 of January 24, 1991

I declare my conviction to conduct myself at all times according to the highest principles of moral, intellectual and material honesty in carrying out my public responsibilities according to the following:

BASIC POSTULATES

- I. LOYALTY** I affirm that all my acts will be guided and inspired by love for Country, its symbols and institutions; by respect for the constitution and the laws which emanate from it; and by the firmest belief in the dignity of the human individual.
- II. DEDICATED SERVICE** I understand and accept that employment by the government as a public servant constitutes simultaneously a privilege and an obligation to serve society because the citizens' taxes pay my salary.
- III. PROBITY** I declare that all resources and funds, documents, goods and any other materials confided to my management or custody will be treated with absolute probity so as to obtain collective benefits.
- IV. HONESTY** I declare that I will act without giving privilege to, or discriminating against anyone through dispensing favors or special services in the performance of my work, nor will I receive benefits or remuneration in addition to those to which I have the right to receive for carrying out my duties.
- V. ACCOUNTABILITY** I am prepared to accept accountability for all my acts so that the general public and the persons with whom I have specific contacts will continuously increase their confidence in me, in the government and in our capacity to serve them.
- VI. COMPETENCE** I recognize my duty to be competent, having and demonstrating the knowledge and attitudes required for the efficient performance of my duties, and continually updating them so as to apply them to the maximum of my intelligence and strength.
- VII. EFFECTIVENESS AND EFFICIENCY** I commit the application of my knowledge and experience in the best possible manner to assure the achievement of the purposes and objectives of the government with optimum quality and timeliness.
- VIII. CIVIC VALOR** I recognize my obligation to solidarity with my companions and fellow citizens; but admit my duty to report, and to avoid becoming an accomplice in anything which contravenes the ethical and moral principles contained in this document.
- IX. TRANSPARENCY** I accept the duty to demonstrate at all times and with sufficient clarity that my actions as a public servant are carried out strictly and permanently abiding by juridical and social standards and principles.

GUILLERMO ENDARA GALIMANY
President of the Republic of Panama

TAB J

**DISCLOSURE OF BUSINESS INTERESTS AND FINANCIAL CONNECTIONS
AND IDENTIFICATION OF RELATIVES IN THE GOVERNMENT SERVICE**

As of December 31, 19____
(Required by R.A. No. 6713)

Surname _____	First Name _____	M.I. _____	Position/Income _____
Address _____			Office _____
			Office Address _____
Spouse Name _____			Position _____
Surname _____	First Name _____	M.I. _____	Office _____

Unmarried Children below 18 years of age:

Name	Date of Birth
_____	_____
_____	_____
_____	_____
_____	_____

A. ASSETS, LIABILITIES AND NETWORTH

I. ASSETS

A. REAL PROPERTIES

KIND	LOCATION	YEAR ACQUIRED	MODE OF ACQUISITION	NATURE OF PROPERTY (paraphernal, conjugal or community)	ASSESSED VALUE	CURRENT FAIR MARKET VALUE	ACQUISITION COST	
							LAND BUILDING, ETC.	IMPROVEMENTS

Total P _____

B. PERSONAL and OTHER PROPERTIES

KIND/S	YEAR ACQUIRED	ACQUISITION COST

Total P _____

C. LIABILITIES (Loans, mortgages, etc.)

NATURE	NAME OF CREDITORS	AMOUNT

NETWORTH [Total Assets (1a + 1b) less
Total Liabilities (2)]

Total P _____

Total P _____

(Note: Please use additional forms/sheets if necessary.)

Do you have any business interest and other financial connections including those of your spouse and unmarried children below 18 years of age living with you in your household? Yes No If yes, give particulars.

NAME	NAME OF FIRM/COMPANY	ADDRESS	NATURE OF BUSINESS AND/OR FINANCIAL CONNECTION	DATE OF ACQUISITION OR CONNECTION

C. IDENTIFICATION OF RELATIVES IN THE GOVERNMENT SERVICE

To the best of your knowledge, are you related within the fourth degree of consanguinity or of affinity anyone working in the government? Yes No If yes, give particulars.

NAME	POSITION	RELATIONSHIP	NAME/ADDRESS OF OFFICE

I hereby certify to the best of my knowledge and information, that these are true statements of my assets, liabilities, net worth, business interests and financial connections including those of my spouse and unmarried children below 18 years of age and names of my relatives in the governments as of December 31, 19___, as required by and in accordance with Republic Act 6713.

I hereby authorized the Ombudsman or his authorized representatives to obtain and secure from all appropriate government agencies, including the Bureau of Internal Revenue, such documents that may show my assets, liabilities, net worth, business interests and financial connections, to include those of my spouse and unmarried children below 18 years of age living with me in my household covering previous years to include the year I first assumed office in the government.

Date _____, 19__

Signature of Spouse

Signature of Employee

TIN : _____

TIN: _____

Com. Cert No.: _____

Com. Cert No. : _____

Issued at : _____

Issued at : _____

Issued on: _____

Issued on : _____

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 19__
affiant exhibiting his Community Tax Certificate as indicated above.

(Person Administering Oath)

TAB K

Republic Act No. 6713

AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Title. - This Act shall be known as the "Code of Conduct and Ethical Standards for Public Officials and Employees".

Section 2. Declaration of Policy. - It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest.

Section 3. Definition of Terms. - As used in this Act, the term:

(a) **"Government"** includes the National Government, the local governments, and all other instrumentalities, agencies or branches of the Republic of the Philippines including government-owned or controlled corporations and their subsidiaries.

(b) **"Public Officials"** includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

(c) **"Gift"** refers to a thing or a right disposed of gratuitously, or any act of liberality, in favor of another who accepts it, and shall include a simulated sale or an ostensibly onerous disposition thereof. It shall not include an unsolicited gift of nominal or insignificant value not given in anticipation of, or in exchange for, a favor from a public official or employee.

(d) **"Receiving any gift"** includes the act of accepting, directly or indirectly, a gift from a person other than a member of his family or relative as defined in this Act, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is neither nominal nor insignificant, or the gift is given in anticipation of, or in exchange for, a favor.

(e) **"Loan"** covers both simple loan and commodatum as well as guarantees, financing arrangements or accommodations intended to ensure its approval.

(f) **"substantial stockholder"** means any person who owns, directly or indirectly, shares of stock sufficient to elect a director of a corporation. This term shall also apply to the parties to a voting trust.

(g) **"Family of public officials or employees"** means their spouses and unmarried children under eighteen (18) years of age.

(h) **"Person"** includes natural and juridical persons unless the context indicates otherwise.

(i) **"Conflict of interest"** arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has a substantial interest in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.

(j) **"Divestment"** is the transfer of title or disposal of interest in property by voluntarily, completely and actually depriving or dispossessing oneself of his right or title to it in favor of a person or persons other than his spouse and relatives as defined in this Act.

(k) **"Relatives"** refers to any and all persons related to a public official or employee within the fourth civil degree of consanguinity or affinity, including *bilas*, *inso* and *balae*.

Section 4. Norms of Conduct of Public Officials and Employees- (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

(a) **Commitment to public interest** - Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

(b) **Professionalism.** - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

(c) **Justness and sincerity.** - Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

(d) **Political neutrality.** - Public officials and employees shall provide service to everyone without unfair discrimination and regardless of party affiliation or preference.

(e) **Responsiveness to the public.** - Public officials and employees shall extend prompt, courteous, and adequate service to the public. Unless otherwise provided by law or when required by the public interest, public officials and employees shall provide information on their policies and procedures in clear and understandable language, ensure openness of information public consultations and hearings whenever appropriate, encourage suggestions, simplify and systematize policy, rules and procedures, avoid red tape and develop an understanding and appreciation of the socio-economic conditions prevailing in the country, especially in the depressed rural and urban areas.

(f) **Nationalism and patriotism.** - Public officials and employees shall at all times be loyal to the Republic and to the Filipino people, promote the use of locally-produced goods, resources and technology and encourage appreciation and pride of country and people. They shall endeavor to maintain and defend Philippine sovereignty against foreign intrusion.

(g) **Commitment to democracy.** - Public officials and employees shall commit themselves to the democratic way of life and values, maintain the principle of public accountability, and manifest by deeds the supremacy of civilian authority over the military. They shall at all times uphold the constitution and put loyalty to country above loyalty to persons or party.

(h) **Simple living.** - Public officials and employees and their families shall lead modest lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious display of wealth in any form.

(B) The Civil Service Commission shall adopt positive measures to promote (1) observance of these standards including the dissemination of information programs and workshops authorizing merit increases beyond regular progression steps, to a limited number of employees recognized by their office colleagues to be outstanding in their observance of ethical standards; and (2) continuing research and experimentation on measures which provide positive motivation to public officials and employees in raising

ing the general level of observance of these standards.

Section 5. Duties of Public Officials and Employees. - In the performance of their duties, all public officials and employees are under obligation to:

(a) Act promptly on letters and requests. - All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.

(b) Submit annual performance reports. - All heads or other responsible officers of offices and agencies of the government and of government-owned or controlled corporations shall, within forty-five (45) working days from the end of the year, render a performance report of the agency or office or corporation concerned. Such report shall be open and available to the public within regular office hours.

(c) Process documents and papers expeditiously. - All official papers and documents must be processed and completed within a reasonable time from the preparation thereof and must contain, as far as practicable, not more than three (3) signatories therein. In the absence of duly authorized signatories, the official next-in-rank or officer-in-charge shall sign for and in their behalf.

(d) Act immediately on the public's personal transactions. - All public officials and employees must attend to anyone who wants to avail himself of the services of their offices and must, at all times, act promptly and expeditiously.

(e) Make documents accessible to the public. - All public documents must be made accessible to and readily available for inspection by, the public within reasonable working hours.

Section 6. System of Incentives and Rewards. - A system of annual incentives and rewards is hereby established in order to motivate and inspire public servants to uphold the highest standards of ethics. For this purpose, a Committee on Awards to Outstanding Public Officials and Employees is hereby created composed of the following: the Ombudsman and Chairman of the Civil Service Commission as Co-Chairmen, and the Chairman of the Commission on Audit and two government employees to be appointed by the President, as members.

It shall be the task of this Committee to conduct a periodic, continuing review of the performance of public officials and employees, in all the branches and agencies of Government and establish a system of annual incentives and rewards to the end that due recognition is given to public officials and employees of outstanding merit on the basis of the standards set forth in this Act.

The conferment of awards shall take into ac-

count, among other things, the following: the years of service and the quality and consistency of performance, the obscurity of the position, the level of salary, the unique and exemplary quality of a certain achievement, and the risks or temptations inherent in the work. Incentives and rewards to government officials and employees of the year to be announced in public ceremonies honoring them may take the form of bonuses, citations, directorships in government-owned or controlled corporations, local and foreign scholarship grants, paid vacations, and the like. They shall likewise be automatically promoted to the next higher position with the commensurate salary suitable to their qualifications. In case there is no next higher position or it is not vacant, said position shall be included in the budget of the office in the next General Appropriation Act. The Committee on Awards shall adopt its own rules to govern the conduct of its activities.

Section 7. Prohibited Acts and Transaction. - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) Financial and material interest. - Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

(b) Outside employment and other activities related thereto. - Public officials and employees during their incumbency shall not:

(1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided that such practice will not conflict or tend to conflict with their official functions; or

(3) Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office.

These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (b)(2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

(c) Disclosure and/or misuse of confidential information. - Public officials and employees shall not use or divulge, confidential or classified information officially known to them by reason of their office and not made available to the public, either: (1) To further their private interests, or give undue advantage to anyone; or (2) To prejudice the public interest.

(d) Solicitation or acceptance of gifts. - Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

As to gifts or grants from foreign governments, the Congress consents to -

(i) The acceptance and retention by a public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy;

(ii) The acceptance by a public official or employee of a gift in the nature of a scholarship or fellowship grant or medical treatment; or

(iii) The acceptance by a public official or employee of travel grants or expenses for travel taking place entirely outside the Philippines (such as allowances, transportation, food and lodging) of more than nominal value if such acceptance is appropriate or consistent with the interests of the Philippines, and permitted by the head of office, branch or agency to which he belongs

The Ombudsman shall prescribe such regulation as may be necessary to carry out the purpose of this subsection, including pertinent reporting and disclosure requirements.

Nothing in this Act shall be construed to restrict or prohibit any educational, scientific or cultural exchange programs subject to national security requirements.

Section 8. Statements and Disclosure. - Public officials and employees have an obligations to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statement of Assets and Liabilities and Financial Disclosure. - All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interest and Financial Connection and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

(a) real property, its improvements, acquisition costs, assessed value and current fair market value;

(b) personal property and acquisition cost;

(c) all other assets such as investments, cash on

hand or in banks, stocks, bonds and the like;

(d) liabilities; and

(e) all business interests and financial connections.

The documents must be filed:

(a) within thirty (30) days after assumption of office;

(b) on or before April 30, of every year thereafter; and

(c) within thirty (30) days after separation from the service.

All public officials and employees required under this section to file the aforesaid documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government.

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

The Statements of Assets, Liabilities and New Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

(1) Constitutional and national elective officials, with the national office of the Ombudsman;

(2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator, and all national executive officials with the Office of the President;

(3) Regional and local officials and employees, with the Deputy Ombudsman in their respective region;

(4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and

(5) All other public officials and employees, defined in Republic Act No. 3019 as amended, with the Civil Service Commission.

(B) Identification and disclosure of relatives. - It shall be the duty of every public official or employee to identify and disclose, to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission.

(C) Accessibility of documents. - (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.

(2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.

(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

(D) Prohibited acts. - It shall be unlawful for any person to obtain or use any statement filed under this Act for.

(a) any purpose contrary to morals or public policy; or

(b) any commercial purpose other than by news and communications media for dissemination to the general public.

Section 9. Divestment. - A public official or employee shall avoid conflicts of interest at all times. When a conflict of interest arises, he shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and or divest himself of his shareholdings or interest within sixty (60) days from such assumption.

The same rule shall apply where the public official or employee is a partner in a partnership.

The requirement of divestment shall not apply to those who serve the Government in an honorary capacity nor to laborers and casual or temporary workers.

Section 10. Review and Compliance Procedure. - (a) The designated Committees of both Houses of the Congress shall establish procedures for the review of statements to determine whether said statements have been submitted on time, are complete and are in proper form. In the event a determination is made that a statement is not so filed, the appropriate Committee shall so inform the reporting individual and direct him to take the necessary corrective action.

(b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of the Congress shall have the power, within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual

situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.

(c) The heads of other offices shall perform the duties stated in subsections (a) and (b) hereof insofar as their respective offices are concerned, subject to the approval of the Secretary of Justice, in the case of the Executive Department and the Chief Justice of the Supreme Court, in the case of the Judicial Department.

Section 11. Penalties - (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, hold-over, permanent or regular capacity committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violation of Sections 7,8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000.00) or both, and , in the discretion of the court of competent jurisdiction, disqualification to hold public office.

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

(c) Private individuals who participate in conspiracy as co-principals, accomplices or accessories, with public officials or employees, in violation of this Act, shall be subject to the same penal liabilities as the public officials or employees and shall be tried jointly with them.

(d) The official or employee concerned may bring an action against any person who obtains or uses a report for any purpose prohibited by Section 8 (D) of this Act. The Court in which such action is brought may assess against such person a penalty in any amount not to exceed twenty-five thousand pesos (P25,000.00). If another sanction hereunder or under any other law is heavier, the latter shall apply.

Section 12. Promulgation of Rules and Regulations, Administration and Enforcement of this Act. - The Civil Service Commission shall have the primary responsibility for the administration and enforcement of this Act. It shall transmit all cases for prosecution arising from violations of this Act to the proper authorities for appropriate action: Provided, however, That it may institute such administrative actions and disciplinary measures as may be warranted in accordance with law. Nothing in this provision shall be construed as a deprivation of the right of each House of Congress to discipline its Members for disorderly behavior.

The Civil Service Commission is hereby

authorized to promulgate rules and regulations necessary to carry out the provisions of this Act, including guidelines for individuals who render free voluntary service to the Government. The Ombudsman shall likewise take steps to protect citizens who denounce acts or omissions of public officials and employees which are in violations of this Act.

Section 13. Provisions for More Stringent Standards. - Nothing in this Act shall be construed to derogate from any law, or any regulation prescribed by any body or agency, which provides for more stringent standards for its officials and employees.

Section 14. Appropriations. - The sum necessary for the effective implementation of this Act shall be taken from the appropriations of the Civil Service Commission. Thereafter, such sum as may be needed for its continued implementation shall be included in the annual General Appropriations Act.

Section 15. Separability Clause. - If any provision of this Act or the application of such provision any person or circumstance is declared invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

Section 16. Repealing Clause. - All laws, decrees and orders or parts thereof inconsistent herewith, are deemed repealed or modified accordingly, unless the same provide for a heavier penalty.

Section 17. Effectivity - This Act shall take effect after thirty (30) days following the completion of its publication in the Official Gazette or in two (2) national newspapers of general circulation.

Approved: February 20, 1989

RULES IMPLEMENTING THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES

Pursuant to the provisions of Section 12 of Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees," approved on February 20, 1989, and which took effect on March 25, 1989, conformably to Section 17 thereof, the following Rules are hereby adopted in order to carry out the provisions of the said Code:

RULE I

Coverage

Section 1. These Rules shall cover all officials and employees in the government, elective and appointive, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive com-

pensation, regardless of amount.

RULE II

Interpretation

Section 1. These Rules shall be interpreted in the light of the Declaration of Policy found in Section 2 of the Code:

"It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest."

RULE III

Reforms On Public Administrative Systems

Section 1. Every department, office and agency shall, as soon as practicable and in no case later than ninety (90) days from the effectivity of these Rules, start conducting value development programs for its officials and employees in order to strengthen their commitment to public service and help promote the primacy of public interest over personal interest in the performance of their duties. Such programs and other parallel efforts on value development shall include, among other things, the following subjects:

- a) Ethical and moral values;
- b) Rights, duties and responsibilities of public servants
- c) Nationalism and patriotism;
- d) Justice and human rights;
- e) Democracy in a free and just society;
- f) Philippine history, culture and tradition; and
- g) Socio-economic conditions prevailing in the country, especially in the depressed areas, and the need for a Code of Conduct and Ethical Standards.

Continuing refresher courses and seminars and/or workshops to promote a high standard of ethics in public service shall be conducted.

Section 2. Professional, scientific, technical trainings and education programs shall enhance to the highest degree, professionalism, excellence, intelligence and skills in the performance and discharge of duties and responsibilities of officials and employees. These programs shall be conducted in all offices of the government and may include subjects that are enumerated in the preceding section.

Section 3. It is the responsibility of every head of department, office and agency to ensure that officials and employees attend the value development program and participate in parallel value development efforts.

Section 4. Every department, office and agen-

cy shall conduct continuing studies and analyses of their work systems and procedures to improve delivery of public services. Towards this end, such studies and analyses shall: (1) identify systems and procedures that lead or contribute to negative bureaucratic behavior; (2) simplify rules and procedures to avoid red tape; and (3) devise or adopt systems and procedures that promote official and employee morale and satisfaction.

Each department, office or agency shall develop a service guide or its functional equivalent which shall be regularly updated and made available to the transacting public. A workflow chart showing procedures or flow of documents shall likewise be posted in conspicuous places in the department, office or agency for the information and guidance of all concerned.

Upon request, the Department of Budget and Management shall assist departments, offices and agencies in the evaluation and adoption of work systems and procedures that will institutionalize a management climate conducive to public accountability.

Section 5. Every department, office and agency shall consult the public they serve for the purpose of gathering feedback and suggestions on the efficiency, effectiveness and economy of services. They shall establish mechanisms to ensure the conduct of public consultations and hearings.

Section 6. Every department, office and agency shall continuously conduct research and experimentation on measures and adopt innovative programs which will provide motivation to officials and employees in raising the level of observance of public service ethical standards.

Section 7. Every department, office and agency shall, in consultation with the Office of the Ombudsman, appoint or designate a resident Ombudsman who shall act immediately on all request for public assistance referred to him by the Ombudsman and his Deputies. He shall be held accountable for the disposition of all requests for assistance.

Section 8. Government officials shall make themselves available to their staff for consultations and dialogues.

RULE IV

Transparency Of Transactions And Access To Information

Section 1. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

Section 2. It is the responsibility of heads of departments, offices and agencies to establish measures and standards that will ensure transparency of and openness in public transactions in their

respective offices, such as in biddings, purchases, other financial transactions including contracts, status of projects, and all other matters involving public interest.

They shall establish information systems that will inform the public of the following: (a) policies, rules, and procedures; (b) work programs, projects, and performance targets; (c) performance reports; and (d) all other documents as may hereafter be classified as public information.

Such information shall be utilized solely for the purpose of informing the public of such policies, programs and accomplishment, and not to build the public image of any official or employee or to advance his own personal interest.

Section 3. Every department, office or agency shall provide official information, records or documents to any requesting public, except if:

(a) such information, record or document must be kept secret in the interest of national defense or security or the conduct of foreign affairs;

(b) such disclosure would put the life and safety of an individual in imminent danger;

(c) the information, record or document sought falls within the concepts of established privilege or recognized exceptions as may be provided by law or settled policy or jurisprudence;

(d) such information, record or document comprises drafts of decisions, orders, rulings, policy decisions, memoranda, etc.;

(e) it would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) it would disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, or (iv) unjustifiably disclose investigative techniques and procedures; or

(g) it would disclose information the premature disclosure of which would (i) in the case of a department, office or agency which agency regulates currencies, securities, commodities, of financial institutions, be likely to lead to significant financial speculation in currencies, securities, or commodities or significantly endanger the stability of any financial institution, or (ii) in the case of any department, office or agency be likely or significantly to frustrate implementation of a proposed official action, except

that subparagraph (f) (ii) shall not apply in any instance where the department, office or agency has already disclosed to the public the content or nature of its proposed action, or where the department, office or agency is required by law to make such disclosure on its own initiative prior to taking final official action on such proposal.

Section 4. Every head of department, office and agency shall establish information systems and networks that will effect the widest possible dissemination of information regarding the provisions of the Code, and the policies and programs relative thereto.

RULE V

Incentives And Rewards System

Section 1. Incentives and rewards shall be granted officials and employees who have demonstrated exemplary service and conduct on the basis of their observance of the norms of conduct laid down in Section 4 of the Code, namely:

(a) Commitment to public interest - Officials and employees shall always uphold the public interest over personal interest. All government resources and powers of their respective departments, offices and agencies must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

(b) Professionalism - Officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

(c) Justness and sincerity - Officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives, whether by consanguinity or affinity, except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

(d) Political neutrality - Officials and employees shall provide service to everyone without unfair discrimination regardless of party affiliation or preference.

(e) Responsiveness to the public - Officials and employees shall extend prompt, courteous, and adequate service to the public. Unless otherwise provided by law or when required by the public interest, officials and employees shall provide information on their policies and procedures in clear

and understandable language, ensure openness of information, public consultations and hearings whenever appropriate, encourage suggestions, simplify and systematize policy, rules and procedures, avoid red tape and develop an understanding and appreciation of the socio-economic conditions prevailing in the country, especially in the depressed rural and urban areas.

(f) Nationalism and patriotism - Officials and employees shall at all times be loyal to the Republic and to the Filipino people, promote the use of locally produced goods, resources and technology and encourage appreciation and pride of country and people. They shall endeavor to maintain and defend Philippine sovereignty against foreign intrusion.

(g) Commitment to democracy - Officials and employees shall commit themselves to the democratic way of life and values, maintain the principle of public accountability and manifest by deeds the supremacy of civilian authority over the military. They shall at all times uphold the Constitution and put loyalty to country above loyalty to persons or party.

(h) Simple living - Officials and employees and their families shall lead modest lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious display of wealth in any form.

Section 2. The following criteria shall be considered in the conferment of awards:

- (a) Years of service;
- (b) Quality and consistency of performance;
- (c) Obscurity of the position;
- (d) Level of salary;
- (e) Unique and exemplary quality of achievement;
- (f) Risk or temptation inherent in the work; and
- (g) Any similar circumstances or considerations in favor of the particular awardee.

Section 3. Incentives and rewards to government officials and employees of the year may take the form of any of the following, as may be determined by the Committee on Awards established under the Code:

- (a) Bonuses; or
- (b) Citations; or
- (c) Directorships in government-owned or controlled corporations; or
- (d) Local and foreign scholarship grants; or
- (e) Paid vacations; and
- (f) Automatic promotion to the next higher position suitable to his qualifications and with commensurate salary; *provided*, that if there is no next higher position or it is not vacant, said position shall be included in the next budget of the office; except when the creation of a new position will result in distortion in the organizational structure of the department, office or agency. Where there is no next higher position immediately available, a salary increase equivalent to the next higher position shall be given and incorporated in the base pay. When a new position is created, that which is vacated shall be

deemed abolished.

The grants of awards shall be governed by the merit and fitness principle.

Section 4. (a) The system shall be administered by a Committee on Awards for Outstanding Public Officials and Employees composed of:

- | | |
|---|-------------|
| (1) Ombudsman | Co-Chairman |
| (2) Chairman CSC | Co-Chairman |
| (3) Chairman COA | Member |
| (4) Two (2) Government Employees to be Appointed by the President | Members |

(b) For this purpose, the Committee shall perform the following functions and responsibilities:

(1) Conduct a periodic, continuing review of performance of officials and employees in all department, offices and agencies;

(2) Establish a system of annual incentives and rewards to the end that due recognition is given to officials and employees of outstanding merit on the basis of standards set forth in Section 2, Rule V hereof;

(3) Determine the form of rewards to be granted;

(4) Formulate and adopt its own rules to govern the conduct of its activities, which shall include guidelines for evaluating nominees, the mechanism for recognizing the awardees in public ceremonies and the creation of sub-committees;

(c) In the evaluation of nominees, the Committee may be assisted by technical experts selected from the government and the private sectors.

Section 5. The Civil Service Commission shall provide secretariat services to the Committee.

Section 6 Nothing herein provided shall inhibit any department, office or agency from instituting its own rewards program in addition to those provided by, but not inconsistent with these Rules.

Section 7. The budget to cover all expenses in the implementation of this Rule shall be incorporated in the appropriation of the Civil Service Commission.

RULE VI

Duties Of Public Officials And Employees

Section 1. As a general rule, when a request or petition, whether written or verbal, can be disposed of promptly and expeditiously, the official or employee in charge to whom the same is presented shall do so immediately, without discrimination, and in no case beyond fifteen (15) working days from receipt of the request or petition.

Section 2. In departments, offices or agencies that are usually swamped with persons calling for a particular type of service, the head of the department, office or agency shall devise a mechanism so as to avoid long queues, such as by giving each person a ticket number duly countersigned which shall specify the time and the date when the person, whose name and address shall be indicated, can be served without delay. Said person shall have the right to prompt service upon presentation of said ticket number.

Section 3. In case of written requests, petitions or motions, sent by means of letters, telegrams, or the like, the official or employee in charge shall act on the same within fifteen (15) working days from receipt thereof, provided that:

(a) If the communication is within the jurisdiction of the office or agency, the official or employee must:

(1) Write a note or letter of acknowledgment where the matter is merely routinary or the action desired may be acted upon in the ordinary course of business of the department, office or agency, specifying the date when the matter will be disposed of and the name of the official or employee in charge thereof.

(2) Where the matter is non-routinary or the issues involved are not simple or ordinary, write a note or letter of acknowledgment, informing the interested party, petitioner or correspondent of the action to be taken or when such requests, petitions or motions can be acted upon. Where there is a need to submit additional information, requirements, or documents, the note or letter of acknowledgment shall so state, specifying a reasonable period of time within which they should be submitted, and the name of the particular official or employee in charge thereof. When all the documents or requirements have been submitted to the satisfaction of the department or office or agency concerned, the particular official or employee in charge shall inform the interested party, petitioner, or correspondent of the action to be taken and when such action or disposition can be expected, barring unforeseen circumstances.

(b) If communication is outside its jurisdiction, the official or employee must:

(1) Refer the letter, petition, telegram, or verbal request to the proper department, office or agency.

(2) Acknowledge the communication by means of a note or letter, informing the interested party, petitioner, or correspondent of the action taken and attaching a copy of the letter of the letter of referral to the proper department, office or agency.

The department, office and agency to which the letter, petition, telegram or verbal request was referred for appropriate action must take action in accordance with subsection (a), pars. 1 and 2 hereof.

The period of fifteen (15) working days herein provided shall be counted from date of receipt of the written or verbal communication by the department,

office or agency concerned.

Section 4. All official papers and documents must be processed and completed within a reasonable time from the preparation thereof. Reasonable time shall be determined in accordance with the following rules:

(a) When the law or the applicable rule issued in accordance therewith prescribes a period within which a decision is to be rendered or an action taken, the same shall be followed;

(b) When the law or the applicable rule issued in accordance therewith does not prescribe a period, the head of department, office or agency shall issue rules and regulations prescribing, among other things, what is reasonable time, taking into account the following factors:

(1) Nature, simplicity or complexity of the subject matter of the official papers or documents processed by said department, office or agency;

(2) Completeness or inadequacy of requirements or of data and information necessary for decision or action;

(3) Lack of resources caused by circumstances beyond the control of the department, office or agency or official or employee concerned;

(4) Legal constraints such as restraining orders and injunctions issued by proper judicial, quasi-judicial or administrative authorities;

(5) Fault, failure or negligence of the party concerned which renders decision or action not possible or premature; and

(6) Fortuitous events or force majeure.

Section 5. Except as otherwise provided by law or regulation, and as far as practicable, any written action or decision must contain not more than three (3) initials or signatures. In the absence of the duly authorized signatory, the official next-in-rank or officer-in-charge or the person duly authorized shall sign for and in his behalf.

The head of department, office of agency shall prescribe, through and appropriate office order, the rules on the proper authority to sign in the absence of the regular signatory, as follows:

(1) If there is only one official next in rank, he shall automatically be the signatory;

(2) If there are two or more officials next in rank, the appropriate office order shall prescribe the order of priority among the officials next in rank within the same organizational unit; or

(3) If there is no official next in rank present and available, the head of department, office or agency shall designate an officer-in-charge from among those next lower in rank in the same organizational unit.

Section 6. All public documents must be made accessible to, and readily available for inspection by, the public during working hours, except those provided in *Section 3, Rule IV*.

Section 7. All heads or other responsible officers of departments, offices and agencies of the government and of government-owned or controlled corporations shall, within forty five (45) working days from the end of the year, render a full and complete report of performance and accomplishments, as prescribed by existing laws and regulations.

Another report of compliance with the provisions of the Code and these Rules shall be prepared and submitted to the Civil Service Commission. The Commission may require officials to provide additional information or furnish documents, if necessary.

Section 8. Officials and employees and their families shall lead modest and simple lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious display of wealth in any form.

Basically, modest and simple living means maintaining a standard of living within the public official or employee's visible means of income as correctly disclosed in his income tax returns, annual statement of assets, liabilities and net worth and other documents relating to financial and business interests and connections.

Public funds and property for official use and purpose shall be utilized with the diligence of a good father of a family.

RULE VII

Public Disclosure

Section 1. Every official and employee, except those who serve in an official honorary capacity, without service credit or pay, temporary laborers and casual or temporary and contractual workers, shall file under oath their statement of assets, liabilities and net worth and a disclosure of business interests and financial connections including those of their spouses and unmarried children under eighteen (18) years of age living in their households, in the prescribed form, Annex A.

(a) Contents of Statement

(1) The Statement of Assets and Liabilities and Net Worth shall contain information on the following:

(a) real property, its improvements, acquisition costs, assessed value, and current fair market value;

(b) personal property and acquisition cost;

(c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like; and

(d) all financial liabilities, both current and long-term.

(2) The Disclosure of Business Interests and Financial Connections shall contain information on any existing interests in, or any existing connections with, any business enterprises or entities, whether as proprietor, investor, promoter, executive, shareholder, officer, managing director, executive, creditor, lawyer, legal consultant or adviser, financial or business consultant, accountant, auditor, and the like, the names and addresses of the business enterprises or entities, the dates when such interests or connections were established, and such other details as will show the nature of the interests or connections.

(b) When to File

The above documents under the Code must be filed:

(1) within thirty (30) days after assumption of office, statements of which must be reckoned as of his first day of service;

(2) on or before April 30 of every year thereafter, statements of which must be reckoned as of the end of the preceding year; or

(3) within thirty (30) days after separation from the service, statements of which must be reckoned as of his last day of office.

(c) Where to File

The Statement of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by the:

(1) President, Vice-President and Constitutional Officials, with the National Office of the Ombudsman;

(2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and national executive officials such as Members of the Cabinet, Undersecretaries and Assistant Secretaries, including the foreign service and heads of government-owned or controlled corporations with original charters and their subsidiaries and state colleges and universities, with the Office of the President.

(3) Regional and local officials and employees, both appointive and elective, including other officials and employees of government-owned or controlled corporations and their subsidiaries and state colleges and universities, with the Deputy Ombudsman in their respective regions;

(4) Officers of the Armed Forces from the rank of Colonel or Naval Captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and

(5) All other officials and employees defined in

Republic Act No. 3019, as amended, with the Civil Service Commission.

A copy of said statements shall also be filed with their respective departments, offices or agencies.

(d) **All Statements of Assets, Liabilities and Net Worth**, as of December 31, 1988, now on file with their respective agencies shall constitute sufficient compliance with the requirements of the Code and they shall be required to accomplish and file the new form as prescribed in these Rules on or before April 30, 1990, and every year thereafter.

(e) Every official and employee shall also execute, within thirty (30) days from date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain, from all the appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests, and financial connections in previous years, including, if possible, the year when they first assumed any office in the government.

(f) Married couples who are both public officials or employees may file the required statements jointly or separately.

Section 2. Every official or employee shall identify and disclose under oath to the best of his knowledge and information, his relatives in the government, up to the fourth civil degree of relationship, either of consanguinity or affinity, including *bilas*, *inso* and *balae*, in the prescribed form, **Annex A**, which shall be filed; (a) within thirty (30) days after assumption of office, the information contained therein must be reckoned as of his first day of office; (b) on or before April 30 of every year thereafter, the information contained therein must be reckoned as of the end of the preceding year; or (c) within thirty (30) days after separation from the service, the information contained therein must be reckoned as of his last day of office.

Section 3. (a) Any and all statements filed in accordance with the preceding sections shall be made available for public inspection at reasonable hours;

(b) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law unless extended for meritorious reasons.

(c) Any duly authorized person requesting a copy of a statement shall be required to pay a reasonable fee as may be determined and prescribed by the Civil Service Commission to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.

(d) Any statement filed under the Code shall be available to the public, subject to the foregoing limitations, for a period of ten (10) years after receipt of the statement. The statement may be destroyed after such period unless needed in an on-going investigation.

RULE VIII

Review And Compliance Procedures

Section 1. The following shall have the authority to establish compliance procedures for the review of statements to determine whether said statements have been properly accomplished:

(a) In the case of Congress, the designated committees of both Houses of Congress subject to approval by the affirmative vote of the majority of the particular House concerned;

(b) In the case of the Executive Department, the heads of departments, offices and agencies insofar as their respective departments, offices and agencies are concerned subject to approval of the Secretary of Justice.

(c) In the case of the Judicial Department, the Chief Justice of the Supreme Court; and

(d) In the case of the Constitutional Commissions and other Constitutional Offices, the respective Chairman and members thereof; in the case of the Office of the Ombudsman, the Ombudsman.

The above officials shall likewise have the authority to render any opinion interpreting the provisions on the review and compliance procedures in the filing of statements of assets, liabilities, net worth and disclosure of information.

In the event said authorities determine that a statement is not properly filed, they shall inform the reporting individual and direct him to take the necessary corrective action.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in the Code.

RULE IX

Conflict Of Interest And Divestment

Section 1. (a) An official or employee shall avoid conflict of interest at all times.

(b) Conflict of interest occurs:

(1) When the official or employee is:

- (a) a substantial stockholder; or
- (b) a member of the Board of Directors; or
- (c) an officer of the corporation; or
- (d) an owner or has substantial interest in a business; or
- (e) a partner in a partnership; and

(2) The interest of such corporation or business, or his rights or duties therein, are opposed to or affected by the faithful performance of official duty.

(c) A substantial stockholder is any person who owns, directly or indirectly, shares of stock sufficient to elect a director of a corporation. This term shall also apply to the parties to a voting trust.

(d) A voting trust means an agreement in writing between one or more stockholders of a stock corporation for the purpose of conferring upon a trustee or trustees the right to vote and other rights pertaining to the shares for certain periods and subject to such other conditions provided for in the Corporation Law.

Section 2. (a) When a conflict of interest arises, the official or employee involved shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his share-holdings or interests within sixty (60) days from such assumption. For those who are already in the service, and conflict of interest arises, the officer or employee must resign from his position in the private business enterprise and/or divest himself of his shareholdings or interests within the periods herein-above provided, reckoned from the date when the conflict of interest had arisen. The same rule shall apply where the public official or employee is a partner in a partnership.

(b) If the conditions in Section 1 (b) concur, divestment shall be mandatory for any official or employee even if he has resigned from his position in any private business enterprise.

(c) Divestment shall be to a person or persons other than his spouse and relatives within the fourth civil degree of consanguinity of affinity.

(d) The requirements for divestment shall not apply to those specifically authorized by law and those who serve the government in an honorary capacity nor to laborers and casual or temporary workers.

RULE X

Grounds for administrative disciplinary action

Section 1. In addition to the grounds for administrative disciplinary action prescribed under existing laws, the acts and omissions of any official or employee, whether or not he holds office or employment in a casual, temporary, hold-over, permanent or regular capacity, declared unlawful or prohibited by the Code, shall constitute grounds for administrative disciplinary action, and without prejudice to criminal and civil liabilities provided herein, such as:

(a) Directly or indirectly having financial and material interest in any transaction requiring the approval of his office. Financial and material interest is defined as a pecuniary or proprietary interest by which a person will gain or lose something;

(b) Owning, controlling, managing or accepting

employment as officer, employee, consultant, counsel, broker, agent, trustee, or nominee in any private enterprise regulated, supervised or licensed by his office, unless expressly allowed by law;

(c) Engaging in the private practice of his profession unless authorized by the Constitution, law or regulation, provided that such practice will not conflict or tend to conflict with his official functions;

(d) Recommending any person to any position in a private enterprise which has a regular or pending official transaction with his office, unless such recommendation or referral is mandated by (1) law, or (2) international agreements, commitment and obligation, or as part of the functions of his office;

These acts shall continue to be prohibited for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of paragraph (c) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, within one year after such resignation, retirement, or separation, provided that any violation hereof shall be a ground for administrative disciplinary action upon re-entry to the government service.

(e) Disclosing or misusing confidential or classified information officially known to him by reason of his office and not made available to the public, to further his private interests or give undue advantage to anyone, or to prejudice the public interest;

(f) Soliciting or accepting, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of his official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of, his office. The propriety or impropriety of the foregoing shall be determined by its value, kinship or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature.

Gift refers to a thing or a right disposed of gratuitously, or any act of liberality, in favor of another who accepts it, and shall include a simulated sale or an ostensibly onerous disposition thereof.

Loan covers both simple loan and commodatum as well as guarantees, financing arrangement or accommodations intended to ensure its approval. Commodatum refers to a contract whereby one of the parties delivers to another something not consumable so that the latter may use the same for a certain time and return it.

This prohibition shall not include:

(1) Unsolicited gift of nominal or insignificant value not given in anticipation of, or in exchange for, a favor from a public official or employee or given after the transaction is completed, or service is rendered. As to what is a gift of nominal value will depend on the circumstances of each case taking into account the salary of the official or employee, the fre-

quency or infrequency of the giving, the expectation of benefits, and other similar factors.

(2) A gift from a member of his family or relative as defined in the Code on the occasion of a family celebration, and without any expectation of pecuniary gain or benefit.

(3) Nominal donations from persons with no regular, pending, or expected transactions with the department, office or agency with which the official or employee is connected, and without any expectation of pecuniary gain or benefit.

(4) Donations coming from private organizations whether local or foreign, which are considered and accepted as humanitarian and altruistic in purpose and mission.

(5) Donations from government to government entities.

As to gift or grants from foreign governments, the Congress consents to

(i) The acceptance and retention by public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy;

(ii) The acceptance by a public official or employee of gift in the nature of a scholarship or fellowship grant or medical treatment; or

(iii) The acceptance by a public official or employee of travel grant or expenses for travel taking place entirely outside the Philippines (such as allowances, transportation, food and lodging) of more than nominal value if such acceptance is appropriate or consistent with the interests of the Philippines, and permitted by the head of office, branch, or agency to which he belongs.

Nothing in the Code shall be construed to restrict or prohibit any educational, scientific or cultural exchange programs subject to national security requirements.

(g) Obtaining or using any statement filed under the Code for any purpose contrary to morals or public policy or any commercial purpose other than by news and communications media for dissemination to the general public;

(h) Unfair discrimination in rendering public service due to party affiliation or preference;

(i) Disloyalty to the Republic of the Philippines and to the Filipino people;

(j) Failure to act promptly on letters and request within fifteen (15)-days from receipt, except as otherwise provided in these Rules;

(k) Failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, except as otherwise provided in these Rules;

(l) Failure to attend to anyone who wants to avail himself of the services of the office, or to act promptly and expeditiously on public personal transactions;

(m) Failure to file sworn statements of assets, liabilities and net worth and disclosure of business interests and financial connections; and

(n) Failure to resign from his position in the private business enterprise within thirty (30) days from assumption of public office when conflict of interest arises, and/or failure to divest himself of his shareholdings or interests in private business enterprise within sixty (60) days from such assumption of public office when conflict of interest arises: *Provided, however*, that for those who are already in the service and a conflict of interest arises, the official or employee must either resign or divest himself of said interests within the periods herein-above provided, reckoned from the date when the conflict of interest had arisen.

RULE XI

Penalties

Section 1. Any official or employee regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of the Code shall be punished with a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Section 7, 8, or 9 of the Code shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000.00) or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of an official or employee, even if no criminal prosecution is instituted against him.

Private individuals who participate in conspiracy as co-principals, accomplices or accessories, with officials or employees, in violation of the Code, shall be subject to the same penal liabilities as the officials or employees and shall be tried jointly with them.

The official or employee concerned may bring an action against any person who obtains or uses a report for any purpose prohibited by Section 8 (d) of the Code. The Court in which such action is brought may assess against such person a penalty in any amount not to exceed twenty five thousand pesos (P 25,000.00). If another sanction hereunder or under any other law is heavier, the latter shall apply.

Section 2. Administrative proceedings for

violation of these Rules shall be in accordance with the Civil Service Law and Rules.

RULE XII

Free Voluntary Service

Section 1. (a) Free voluntary service refers to services rendered by persons who are in government without pay or compensation.

(b) The requirements of free voluntary service are as follows:

- (1) Issuance of an appropriate document;
- (2) Fitness and suitability for the duties and responsibilities of the particular position; and
- (3) Compliance with the rule on nepotism

(c) The following are the functions or services that volunteers can perform:

- (1) Advisory;
- (2) Consultancy or counseling;
- (3) Recommendatory;
- (4) Professional Services;
- (5) Staff work such as planning or research; or
- (6) Humanitarian.

(d) Those who render free voluntary service to the government are covered by the following:

- (1) Laws on rewards and incentives;
- (2) Norms of conduct and ethical standards;
- (3) Duties and obligations of public officers and employees;
- (4) Prohibitions and sanctions enumerated in these Rules; and
- (5) Civil and criminal liability.

(e) Those who render free voluntary service are, however, exempted from the filing of statements of assets, liabilities and net worth and financial disclosures, the requirement on divestment and the appropriate eligibility requirement, for their designations, and shall not enjoy security of tenure.

Unless otherwise provided in the terms of their designations, volunteers are prohibited from:

- (1) Exercising supervisory functions over personnel;
- (2) Exercising functions of position involving national security;
- (3) Having access to confidential or classified information unless authorized by proper authorities;
- (4) Occupying regular plantilla positions;
- (5) Having such services credited as government service and availing themselves of retirement benefits;
- (6) Using facilities and resources of the office for partisan political purposes; and

- (7) Receiving any pecuniary benefits such as honoraria, allowances and other perquisites of office.

RULE XIII

Amendment

Section 1. The Civil Service Commission may amend or modify these Rules as may be necessary.

RULE XIV

Effectivity

Section 1. These Rules shall take effect thirty (30) days following the completion of their publication in the Official Gazette or in a newspaper of general circulation.

Quezon City, April 21, 1989.

TAB L



Honrando la Confianza del Pueblo

GOVERNMENT ETHICS LAW AND AMENDMENTS

Act No. 12 July 24, 1985

(787) 766-4400

FAX (787) 754-0977

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<http://www.tld.net/users/ofetica>

(Substitute to
S.B. 292)
(Conference)

(No. 12)

(Approved July 24, 1985)

AN ACT

To promote and preserve the integrity of the public officials and institutions of the Government of the Commonwealth of Puerto Rico; to establish a Code of Ethics for officials and employees of the Executive Branch, establish provisions with regard to officials and employees of the Judiciary and Legislative Branches, and for former public servants of the Executive, Legislative and Judicial Branches; to create the Office of Government Ethics and determine its functions; to require government officials who fill elected, high level and sensitive offices, to submit reports on their personal finances in order to avoid possible conflicts of interest; to impose certain duties and grant certain powers to the Secretary of Justice; to establish penalties and appropriate funds for the enforcement of this Act; and to repeal Acts No. 110 of May 12, 1943 as amended, and No. 28 of June 8, 1948 as amended.

STATEMENT OF MOTIVES

Our people has developed historically with an exemplary cultural tradition, and probity. As a people, as persons, and even more so, as public servants, we cannot deviate from this path.

As a political body, the Commonwealth of Puerto Rico is committed to a moral and ethical responsibility in the sense of acting according to a set of principles and standards, which govern the course of its people's proper living. This

ethical responsibility demands a constant examination of the social and public behavior of its citizens.

The Commonwealth must guarantee due respect of the citizens rights and obedience of the law at all times. This is a fundamental mission, especially with respect to the conduct of those officials who represent it as public servants.

Unfortunately, there are times that improper actions come forth on the part of some officials, who, being guilty of certain violations of ethical standards endanger the stability of the Commonwealth's moral support. It is intolerable that there could be public officials who represent the Government's administration, who would benefit from the People's wealth. Conflicts of interest, especially financial ones, in open violation of the laws, are also intolerable.

In order to restore the people's confidence in its Government and in its public officials, whom many of them have gone beyond tolerable levels, it is necessary to adopt new, adequate legislative measures to prevent and penalize delinquent behavior on the part of those officials who, in the course of their official duties, injure the basic principles of an ethic of excellence.

In view of these considerations, we understand that the approval of a Code of Ethics for officials and employees of the Executive Branch, and the creation, by this Act, of an Office of Government Ethics, is a measure whose approval is of far-reaching importance.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

CHAPTER I—TITLE AND DEFINITIONS

Section 1.1 → This Act shall be known as the Ethics in Government Act of the Commonwealth of Puerto Rico.

Section 2.1— Definitions

For purposes of this Act, the words or phrases enumerated herein shall have the meaning indicated below, unless another meaning can be clearly derived from the context:

a. **public official**—includes those persons filling offices or jobs in the Government of the Commonwealth of Puerto Rico which are vested with part of the sovereignty of the State.

b. **public employee**—includes those persons filling offices or jobs in the Government of the Commonwealth of Puerto Rico which are not vested with part of the sovereignty of the State, and includes regular and irregular employees, those rendering services under contract equivalent to a regular office or position, those with a transitory appointment, and those who are in a probationary period.

c. **public servant**—includes public officials and employees.

d. **former public servants**—includes persons who have served as public officials or employees in the Executive Agencies of the Government of Puerto Rico, the Legislative Branch, and the Judicial Branch.

e. **executive agencies**—includes the entities and bodies of the Executive Branch of the Government of the Commonwealth of Puerto Rico, including public corporation, the municipalities, and the agencies under control of this Branch.

f. **private person**—includes natural and juridical persons, or groups of persons.

g. **family unit**—includes the spouse of the public official or employee, his dependent children or those persons who share his legal residence or whose financial affairs are under his legal control.

h. official action—includes, among others, executive or administrative decisions such as granting of permits, licenses, orders, authorizations, exemptions, resolutions and contracts. It does not include approval of Commonwealth legislation.

i. contribution—includes a payment, gift, subscription, advance loan, and any promise or agreement to grant it.

j. income—means any income from any source whatsoever, including, but not limited to the following categories: salaries, remuneration for services, gross income from a business, profits derived from property transactions, interest, earnings, dividends, royalties, annuities, income from life insurance and endowment policies, pensions, shares from a partnership, and income corresponding to an interest in an inheritance or trust. Contributions made to political parties or candidates, pursuant to the authorization in the electoral statutes in effect, shall not be deemed as "income" or "gift".

k. gift—includes, among others, money, assets, or any object, economic opportunities, tips, discounts, or special attentions.

l. controllable interest or participation—ownership of more than fifty percent of an entity, business or asset, or ownership of sufficient shares to grant an effective control of decisions.

m. Government of Puerto Rico—means the Government of the Commonwealth of Puerto Rico.

n. Legislative Branch—means the House of Representatives and the Senate of Puerto Rico, the Controller of Puerto Rico, and any other office or joint dependency of both bodies.

o. Office—means the Office of Government Ethics of Puerto Rico, created by this Act.

p. Director—means the Director of the Office of Government Ethics, created by this Act.

CHAPTER II— CREATION OF THE OFFICE OF GOVERNMENT ETHICS

Section 2.1— Creation

The Office of Government Ethics of Puerto Rico, hereinafter denominated the Office, which shall be charged with ensuring strict compliance with the provisions of law that establish specific restriction on public officials and employees, as a result of their office or employment, or which require specific officials to disclose financial information, is hereby created.

In order to promote the administrative independence which is indispensable to carry out the delicate functions hereby entrusted to it, the Office shall be excluded from Act No. 5 of October 14, 1975 as amended, known as the Public Service Personnel Act of Puerto Rico; from Act No. 230 of July 23, 1974 as amended, known as the Puerto Rico Government Accounting Act, and from Act No. 164 of July 23, 1974 as amended, known as the General Services Administration Act.

Notwithstanding the above, the fiscal operations of the Office shall be audited and examined by the Controller of Puerto Rico. The Office shall have the capacity to sue and be sued.

Section 2.2— Appointment and Removal of the Executive Director.

(1) The Office shall be directed by an Executive Director, hereinafter denominated as the Director. Upon approval of this Act, the Secretary of Justice shall convene the former Justices of the Supreme Court of Puerto Rico with the charge of recommending to the Governor a list of a least three (3) possible candidates for the office of Director.

In the event that the number of former Justices of the Supreme Court of Puerto Rico is less than five, the Secretary of Justice shall appoint former Judges

of the Superior Court, so that together with the former Justices of the Supreme Court, they may constitute a five-member panel charged with recommending at least three (3) possible candidates to fill the office of Director.

When there are no former Justices of the Supreme Court of Puerto Rico, the Secretary of Justice shall appoint five former Judges of the Superior Court to recommend, at least three (3) possible candidates for the office of Director, to the Governor.

In the event that the former Judges do not submit a list of recommended candidates to the Governor within thirty (30) days after being convened by the Secretary of Justice, the Governor shall make the appointment.

None of that which is provided herein shall be understood as a limitation of the constitutional right of the Governor to exercise his power of appointment with absolute discretion. The Director shall be appointed by the Governor with the advice and consent of the Senate and the House of Representatives.

(2) The Director shall serve for a term of five (5) years, or until his successor is appointed and takes office. The person appointed to fill such office may not be appointed for more than two (2) consecutive terms. In the event a vacancy occurs in the office of Director before the expiration of the term of five (5) years, the new appointment shall be made for a term of five (5) years.

The same appointing procedure established in the preceding paragraph shall be followed in all subsequent appointments. As soon as there is a vacancy in this office, the Secretary of Justice shall convene the former Justices of the Supreme Court of Puerto Rico, and shall appoint the former Judges of the Superior Court in the cases provided in the preceding paragraph.

(3) The Director shall not:

(a) contribute money directly or indirectly to political parties or organizations.

(b) fill, or campaign to fill any office whatsoever in the direction or organization of a political party, nor run for elective public office.

(c) participate, nor collaborate directly or indirectly, in any political campaign whatsoever.

(d) influence any decision of any government official except when it is within his official duties.

(4) The Director may only be removed from office for the following reasons:

(a) immoral, illegal or reprehensible conduct, or violations of the prohibitions related to this office as established by this Act;

(b) manifest professional unfitness, or incompetence, in the fulfillment of his functions and duties;

(c) conviction for any felony, or misdemeanor that implies moral depravation;

(d) manifest misuse of the authority or discretion conferred to him by this, or other Acts;

(e) dereliction of duty.

The Director may be removed from office for mental or physical disability. The removal shall be deemed as a voluntary resignation, for all legal effects and consequences.

The Director may be removed or separated from office only by duly bringing charges against him before the Superior Court, which shall establish the procedure to be followed and shall make the corresponding decision.

Section 2.3—Requirements and Salary

The office of Director may only be held by a person over twenty-one years of age, who is a citizen of the United States, and a citizen and bona-fide resident of Puerto Rico, of recognized professional capacity, moral integrity, and who is knowledgeable of public administration and government functions.

The person shall not have been a candidate in a primary or in a general or special election process, during the last four years immediately preceding his appointment.

The Director shall draw a salary equivalent to that of a Secretary of the Constitutional Cabinet, other than the Secretary of State.

The Director shall have the option of joining, withdrawing from, or rejoining the Retirement System, pursuant to the provisions of Section 4 of Act No. 447 of May 15, 1951 as amended, and the Savings and Loans Fund created by Act No. 133, of June 28, 1966 as amended.

Section 2.4—Powers and Authority

The Director shall have the following powers and authority:

A. To draft and promote programs for the moral and ethical conduct of public servants, addressed to attaining the following objectives:

1. the establishing of criteria of excellence, personal integrity, honesty, responsibility and truthfulness in public administration to inspire, promote and restore the confidence of the citizens in the institutions of government.

2. the commitment by all public servants that personal interests shall not replace the public interest and that all illegal, discriminatory, fraudulent norms or administrative incompetence, shall be eliminated.

3. the continuous support, and the holding of workshops and training programs to promote compliance with the merit system, and to achieve excellence and professional skills in public service.

4. the demeanor of all public servants, with an attitude of respect, courtesy, and concern for the citizens' needs beyond the personal convenience of the employee or official, and beyond complacency with the state of things.

5. the safeguarding of all that confidential information to which the public servant is privileged to have access, as part of his responsibilities.

6. the motivation of all public servants to exercise the maximum allowable discretion to promote the public interest and government efficiency.

B. To interpret, apply, and enforce the provisions of this Act and the rules and regulations that establish specific prohibitions with regard to the conduct of certain officials and public employees, or that govern questions of ethics, conflicts of interest and filing of financial statements.

C. To resolve certain controversies on the application of this Act.

D. To establish and administer procedures to identify violations of ethics and honesty, to prevent conflicts of interest, and to take or direct, the disciplinary, administrative, or civil measures authorized by this Act, after the due investigations and hearings, where the parties involved have an adequate opportunity to be heard and defend themselves.

E. To examine and obtain a copy of all relevant evidence concerning any matter he is investigating or studying, or which is in dispute before the Office, and designate examining officials to hold hearings and admit evidence.

F. To take oaths on his own, or through any official from his Office on whom he may delegate, and request summons from the Superior Court requiring the appearance and testimony of witnesses and the production of documents and all the evidence related to any matter pending before the Office.

G. To issue the orders which may be necessary and convenient to carry out his functions, responsibilities and duties under this Act.

H. Promulgate the regulations which may be necessary and convenient to comply with the purposes of this measure, including rules of procedure for the hearings and investigations it holds, which shall have the force of law.

I. To review the financial statements that are filed to determine if said statements reveal possible violations of the laws or regulations that apply to conflicts of interest, and recommend the corresponding action to correct any conflict of interest, or matter of ethics revealed by the review.

J. To establish, through regulations, the information that must be included in the financial statements, and their accessibility to public inspection. With respect to persons in the Executive Branch and the mayors, these regulations shall take effect as of the date they are approved by the Governor and promulgated; with respect to members of the Legislature, as of the date they are approved by the Senate or the House of Representatives, as the case may be, and promulgated.

K. To develop and adopt through regulations consistent with this Act, the standards that shall govern the procedures for the filing and review of the financial statements filed by officials and employees who are legally bound to do so.

L. To supervise and investigate the compliance of individuals or agencies with whatever requirements regarding financial statements, or internal review, that are established by this Act.

M. To study the reports of the Controller of Puerto Rico. and the Joint Committee on Special Reports by the Controller, to identify possible violations of the provisions of this Act; to carry out the investigations he deems necessary, and take the pertinent actions authorized herein.

- N. To establish a service regarding opinions issued on matters of his concern that are of general application, or on specific matters on which he is consulted. The opinions of the Director shall be compiled, published and available, not only to government bodies, but to the general public as well. The Director may fix, and charge the public a reasonable fee to compensate for the printing and distribution costs of the opinions.
- Ñ. To request such reports as he may deem necessary from the agencies.
- O. To collaborate with the Secretary of Justice in evaluating the effectiveness of the legal provisions that govern conflicts of interest and make pertinent recommendations.
- P. To evaluate the need to amend the rules and Regulations regarding conflicts of interest and matters of ethics in Government, in order to adjust them to, or so that they adequately supplement the laws on these conflicts.
- Q. To develop general standards with regard to the prevention of conflicts of interest by officials and employees in public service, and an effective system to advise the Secretary of Justice as to possible violations of the conflict of interest laws.
- R. To provide information, and promote the publication and understanding, of ethical standards in the agencies; orient the public, and to educate and inform public servants and citizens as to the functions of the Office and government ethics, in general.
- S. To delegate, under his supervision, on any official from any government agency designated to such effect, any power or authority, when necessary, except the power to regulate. These delegates shall be recognized for all legal effects, as if their functions were being performed directly by the Director.

T. To organize the Office, and appoint or contract the necessary personnel to carry out the duties and functions established by this Act, pursuant to the criteria that will ensure the rendering of services of the highest quality, without being subject to the personnel statutes.

U. To take any other action or measure which is necessary and convenient, to comply with the purposes of this Act.

Section 2.5—Access to Information and Services

Upon a request from the Director, every agency shall:

(a) put at the disposal of the Director its services, personnel and facilities, to the greatest extent possible, to execute the provisions of this Act.

(b) furnish the Director with all the information in its possession which the Director may deem necessary to carry out his functions, except when it is expressly prohibited by law.

(c) consider amendments to the personnel regulations in effect, and which, in the judgement of the Director, are needed to incorporate the provisions related to ethics; to prevent conflicts of interest by public employees; to tipify the conduct that shall constitute a violation of the Regulations in effect, and to establish the corresponding administrative sanctions that are not covered by such Regulations, or to delete the existing discrepancies when it is pertinent .

CHAPTER III—CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES OF
THE EXECUTIVE BRANCH; RESTRICTIONS ON ACTIONS OF FORMER PUBLIC
SERVANTS; PROVISIONS REGARDING OFFICIALS AND EMPLOYEES OF THE
LEGISLATIVE AND JUDICIARY BRANCHES

Section 3.1 Jurisdiction and Scope

This Code regulates the conduct of officials and employees of the Executive Branch of the Commonwealth of Puerto Rico, including its municipalities, public corporations, and the agencies that are under the control of said Branch, and establishes some restrictions to the actions of former public servants of the Executive, Legislative and Judiciary Branches.

Certain provisions are hereby established with regard to the approval of standards to govern the conduct of public servants of the Judiciary and Legislative Branches, in addition to the provisions of the Constitution of the Commonwealth of Puerto Rico, and the Laws, Regulations and Executive Orders in effect.

Section 3.2 Ethical Prohibitions of a General Nature

A. No public official or employee, whether personally, or acting as a public servant, shall disregard the laws in effect, nor the summons or orders of the Courts of Justice, the Legislative Branch, or the agencies of the Executive Branch thus empowered.

B. No public official or employee, shall delay the rendering of services that the executive agencies of the Government of the Commonwealth of Puerto Rico are obligated to render, nor hinder the efficient operation of the Executive Branch.

C. No public official or employee, shall use the duties and powers of his office, nor public property or funds directly, or indirectly, to obtain advantages,

benefits, or privileges not permitted by law, for himself, any member of his family unit, nor for any other person, business or entity.

D. No public official or employee, shall request, nor accept any asset whatsoever, of monetary value, as payment for carrying out the duties and responsibilities of his employment, other than the salary, wage or compensation to which he is entitled because of his public duties or employment.

E. No public official or employee shall accept, or solicit from any person whatsoever, directly or indirectly, neither for himself, for any member of his family unit, nor for any other person, business or entity, any asset whatsoever of monetary value, including gifts, loans, promises, favors or services, in exchange for the actions of said public official or employee being of influence in behalf of that person or any other.

F. No public official or employee who is a regular employee of the Government, shall receive additional pay or special compensation of any nature from the Government of Puerto Rico or from any municipality, board, commission, or body which in no way depends on the Government, for personal services or official services of any nature, even though they are rendered in addition to the regular functions of the official or employee, unless said special pay or compensation is expressly authorized by Section 177 of the Political Code, or any other legal provision.

G. No public official or employee shall reveal or use confidential information obtained in the course of his employment, to obtain directly or indirectly economic advantage or benefit for himself, a member of his family unit, or for any other person, business or entity.

Section 3.3—Prohibitions Related to Other Employment, Contracts or Businesses

A. No public official or employee shall accept employment or contractual business relationships or responsibilities, in addition to those of his public employment, whether it is in the Government or the private sector, which although legally permitted, has the effect of undermining his freedom of judgement in the performance of his official functions.

B. No public official or employee shall accept employment or contractual business relationships with a person, business, or entity which is regulated by, or does business with the government agency for which he works, when the public official or employee participates in institutional decisions of the agency, or is empowered to decide or influence the official actions of the agency related to said person, business or entity.

C. No public official or employee who is authorized to contract in the name of the executive agency for which he works, may execute a contract between his agency and an entity or business in which he, or any member of his family unit, has a direct or indirect pecuniary interest.

D. No executive agency may execute a contract in which any of its officials or employees, or any member of their family units, has a direct or indirect pecuniary interest, unless the Governor authorizes it, subject to the recommendations of the Secretary of the Treasury and the Secretary of Justice.

E. No public official or employee may be a part of, or have any interest in the profits or benefits resulting from a contract with any other executive agency or government dependency, unless the Governor expressly authorizes it, subject to the prior recommendation of the Secretary of the Treasury and the Secretary of Justice. The contracting may only be executed in the case foreseen by this

paragraph, without requesting and obtaining the authorization of the Governor, when the contract is for a value no greater than \$3,000.00 and does not occur more than once during any fiscal year.

F. In every case in which a contract has been made in violation of the provisions of this Section, it may be voidable, and the Office of Government Ethics and the Secretary of Justice are hereby authorized to request the Courts of Justice, in representation of the Commonwealth, to declare said contract null.

G. The prohibitions established by this Section shall not be applicable to contracts executed by any executive agency for the acquisition of copyrights or patents of inventions of its officials and public employees.

Section 3.4—Prohibitions Related to the Representation of Private Interests in Conflict with Official Functions

A. No public official or employee may represent, any private person whatsoever directly or indirectly, to obtain the approval of an act or ordinance, to obtain a contract, the payment of a claim, a permit, license or authorization, nor any other matter, transaction or proposal, if he, or any member of his family unit has participated or will participate, or will probably participate in his official capacity in the disposition of the matter. This prohibition shall not apply when dealing with official acts of the public officials or employee, within the limits of his authority.

B. No public officials or employee may represent any private person whatsoever, directly or indirectly, before an executive agency, in exchange for compensation, or financial gain, with respect to any claim, permit, license, authorization, matter, transaction or proposal that involves official action on the part of the agency, if he, or any member of his family unit, possesses executive authority over the agency.

C. No public official or employee may represent, or in any other way counsel any private person whatsoever directly or indirectly, before any executive agency, in exchange for compensation or financial gain, in cases or matters related to the Government of Puerto Rico, or in cases or matters that involve conflicts of interest or public policy, between the Government and the interests of said private person.

D. For the purposes of this Section and Section 3.7, the term 'matter' means those in which the official or employee has participated personally and substantially, and which occurred through a decision, approval or disapproval, recommendation or advice, or a special investigation involving specific parties. It does not include the participation or intervention of the official or employee in the promulgation of standards or regulations of general application, or abstract directives or instructions that do not allude to special situations or specific cases.

Section 3.5—Standards of Conduct for Officials and Employees of the Judiciary Branch and the Legislative Branch.

The conduct of the officials and employees of the Judiciary Branch and the Legislative Branch shall be governed by the provisions of the laws in effect that apply to each one of these Branches of Government and the regulations they adopt.

Within one year after the effective date of this Act, the Legislative Branch or each one of its Chambers, and the Judiciary Branch shall approve Codes of Ethics or amendments to the regulations in force, which shall incorporate the principles enunciated herein as far as possible; without it constituting an impairment of the authority conferred to them by the Constitution and the Laws of the Commonwealth of Puerto Rico to govern the conduct of its respective officials and employees.

Section 3.6—Duty to Report Situations of Possible Unethical Acts or Conflicts of Interest.

Any public official or employee of the Executive Branch who has to take any official action which constitutes a violation of the prohibitions established by Sections 3.2, 3.3 and 3.4 of this Act, shall report the fact to the Office of Government Ethics before taking such action. The public official or employee may request to be relieved of having to intervene in the matter or participate in the agency's deliberations related to the matter.

The government official or employee shall deliver a copy of the sworn statement filed at the Office of Government Ethics to his immediate supervisor.

The existence of a conflictive situation shall not stop the public official or employee from taking the official action, when his action or participation is required by law, or is unpostponable.

When the Office understands that there is no situation of a conflict of interest and it is proper to authorize that the action be taken, it shall so state in an opinion which it shall serve to the official or employee, and to the government agency concerned.

The dispensation which may be granted pursuant to the provisions of this Section, or of any other provision of this Act, shall be forwarded to the Office of Government Ethics and shall be kept in a Register available to the public.

Section 3.7—Restrictions to the Actions of Former Public Servants

A. No former public servant may give information to, advise in any way, or represent in any capacity, whether personally or through another private person, any person with interests contrary to those of the Commonwealth of Puerto Rico in those matters, actions, procedures or claims, which were in any way submitted

for information, study, investigation, resolution, decision, or transaction, before any agency, office, dependency or Court of the Government of Puerto Rico, while said former servants rendered services in that agency, office, dependency or Court, and as long as said former servants had to deal directly or indirectly with these actions and matters.

No former public servant may cooperate in any way whatsoever, in the preparation of, or handling of said matters, actions, procedures or claims, against the Commonwealth of Puerto Rico, nor use nor make available the use of information obtained while he was an public official or employee, against the Commonwealth of Puerto Rico.

B. No former public servant shall fill any office, nor have any pecuniary interest whatsoever with any person or entity with which the agency, office, dependency, or Court, for which he worked should have executed contracts for goods and services during the incumbency of said officials or employee, and who participated directly in the contracting, during the year following the termination of his employment.

C. No former public servant, no member of his family unit, nor the business in which he, or some member of his family unit is a partner, member, or employee, may offer information, advise, or represent any person in any capacity, before the agency, dependency, or Court for which the former public servant worked, with respect to those cases or matters with which the former servant may have had to deal directly or indirectly while he was a public official or employee, during the year following the date of termination of his employment.

D. The agencies, offices, dependencies or Courts, shall refuse the action or intervention of former public servants which violate the provisions of this Section, on their own initiative, or by request of the Director of the Office.

E. In addition to the sanctions and remedies provided by Section 3.8, any violations of the provisions of this Section shall constitute professional malpractice and shall warrant that the concerned body provides for the temporary cancellation of the license or title granted to practice the profession or occupation, in accordance with the applicable procedure.

Section 3.8—Sanctions and Remedies

A. Actions of a Penal Nature

1. Any person who intentionally violates the prohibitions and provisions, established in paragraphs C, D, E, and G of Section 3.2, and paragraphs B, C, D, and E of Section 3.3, and Section 3.4 of this Chapter, shall be guilty of a felony, and upon conviction, shall be sanctioned for each violation, with a fixed term of imprisonment of one (1) year or a fine of two thousand (2,000) dollars; or both penalties at the discretion of the Court.

If there were aggravating circumstances, the established fixed penalty may be increased up to a maximum of two (2) years, or to three thousand (3,000) dollars. If there were extenuating circumstances, the penalty may be reduced to a minimum of six (6) months and one (1) day, or to one thousand (1,000) dollars.

2. A person thus convicted shall be disqualified from filling any public office or employment, subject to the provisions of Section 3.4 of Act No. 5 of October 14, 1975 as amended, known as the Public Service Personnel Act of Puerto Rico.

3. The crimes established by this Chapter shall prescribe in five (5) years.

(4) The person convicted of the crimes established by this Chapter shall not have the benefit of a suspended sentence.

B. Actions of a Civil Nature

1. The Office shall have the power to request the Superior Court to issue an injunction to prevent any violation of this Chapter and file the proper actions to recover the civil sanctions imposed in behalf of the State.

2. The Office may go before the Superior Court to request that the execution of any official action which constitutes a violation of the prohibitions established by this Chapter, be prevented, suspended or paralyzed.

3. Any person who receives financial gain as a result of a violation of this Chapter shall be bound to pay the State, as civil sanction for noncompliance, a sum equivalent to three times the value of the financial gain received.

4. The violation of any of the provisions of this Chapter may be penalized, in the cases it is applicable, with any of the following administrative sanctions imposed by the corresponding authority:

- a. written reprimand
- b. suspension from work and salary
- c. dismissal or firing

**CHAPTER IV— FILING OF FINANCIAL STATEMENT BY CERTAIN
PUBLIC OFFICIALS AND EMPLOYEES**

Section 4.1—Applicability

A. The provisions of this Chapter which require the filing of financial statements are applicable to the following public officials and employees:

- 1. The Governor
- 2. The Controller of Puerto Rico

3. Officials of the Executive Branch whose appointments require the advice and consent of the Senate, or of the Senate and the House of Representatives.

4. Heads of agencies of the Government of the Commonwealth of Puerto Rico, at the Secretary or Undersecretary level, but excluding the heads of municipal corporations.

5. Presidents or executive directors of public corporations.

6. Members of the Legislature, subject to the provisions of Section 4.10 (D).

7. Mayors

8. Any other office or post, including, but not limited to the office of Assistant Secretary, Bureau Director or Head of Office, whose inclusion is recommended by the head of the agency and directed by the Director of the Office.

B. The Director of the Office of the Government Ethics or the Governor of Puerto Rico, may exempt persons who render their services without pay or who only receive per diems, from the obligation of filing reports.

C. The obligation to file financial statements under this Act shall not be affected by the obligation to file reports of this nature under other acts or authorities.

Section 4.2—Frequency and Coverage of the Required Financial Statements

A. All public officials or employees shall file a detailed statement with the Office within the first sixty (60) days following the date that the public official or employee takes possession of his office or classified position, that includes all the information required by the Office. The financial statement will not have to be

filed by those persons who have abandoned a classified position or office before sixty (60) days have elapsed since they assumed a new classified position or office.

This first statement shall cover the last calendar year, and in a separate section, the part of the year elapsed up to the date he began his position or employment.

Those public servants who on the effective date of this Act have held a post or position which is subject to the obligation to file financial statements for more than sixty (60) days, shall file their first statement within the ninety (90) days following the date on which the Director prepares the forms and explanatory appendix required by Section 4.3 of this Act.

Every person nominated by the Governor to hold a classified position, or office requiring confirmation by the Senate, or by the Senate and the House of Representatives, shall file a financial statement including the information required by the Office within the first fifteen (15) days following the date on which said nomination was sent to the Legislature.

B. The annual statements shall be submitted no later than the first of March of each one of the years following the one in which the first statement was filed, provided the public official or employee has held office for more than sixty (60) days during the previous calendar year. The statement shall cover the preceding calendar year.

C. Upon ceasing in an classified position or office, every person shall file a financial statement within sixty (60) days after having ceased in the post or position, that includes all the information required by the Office for the previous calendar year, if he has not yet filed it, and including the date on which the person ceased in such office or position, unless he has gone on to fill another classified position or office.

D. The Director of the Office of Government Ethics may grant an additional term to file the financial statements required by this law, according to the regulations adopted, but this additional term shall not exceed sixty (60) days.

E. The provisions of this Section notwithstanding, there shall be no obligation to submit the required financial statements until the Director has prepared the forms and explanatory appendix required by Section 4.3.

Section 4.3—Contents of the Reports

The Director of the Office of Government Ethics shall determine by regulations adopted pursuant to the provisions of paragraph (J) of Section 2.4, the information that must be included in the financial statements, in accordance with the provisions of this Act; he shall design the official form and the explanatory appendix that will be used to remit the information required, and will have the necessary copies of the forms and explanatory appendix available for every person bound to complete and submit them. The Director shall determine through regulations and shall include on the forms, the method of publication, including, whether the source should be revealed, whether the exact amounts shall be indicated, or whether the value is to be informed by categories or items, and the degree of identification of the information filed, for each type of information that is to be revealed.

The Director shall be bound to prepare and publish guidelines with regard to the accounting methods and how to file the required information, which shall be used by the persons submitting financial statements under this Act.

The person filing the statement shall determine the approximate value of each item based on the guidelines prepared and published by the Director.

Section 4.4--Required Information

The regulations adopted by the Director of the Office of Government Ethics shall require that every financial statement includes the following information with regard to the person filing the statement and his spouse, for the period covered by the statement:

1. name, official address, and public office or employment held by the person submitting the statement.
2. Name or names, under which they do business.
3. Occupation, profession, or trade.
4. Name and address of the main place of business or work.
5. All business or employment relations.
6. Name, address, and name or names, under which business is done by other members of his family unit who are public officials or employees, that have done business with, or rendered services to the Government of Puerto Rico, or its municipalities, during the period covered by the financial statement, or who are partners, directors or employees of businesses or entities that have done business with, or rendered services to the Government of Puerto Rico, or its municipalities, during that period.
7. Income from, or interest in real or personal property and in any property in its broadest meaning.
8. Stocks, private enterprise bonds, insurance policies and other proprietary participations in enterprises or businesses, whose joint worth exceeds one thousand (1,000) dollars, including an indication of each enterprise or business involved.
9. State or municipal bonds whose joint value exceeds one thousand (1,000) dollars, and every related transaction during the period covered by the statement.

10. Debts with a balance of over one thousand dollars at any time during the period covered by the statement, indicating the rate of interest of each debt, and including any debt liquidation or reduction to one thousand (1,000) dollars or less, during the period covered by the statement.

11. Debts with regard to which he is receiving any type of preferential or special treatment when compared to that received by other debtors of the same creditor under similar circumstances for the same type of debt.

12. Transactions for the purchase, sale or barter of real or personal property.

13. Agreements or arrangements for future remuneration.

14. Any other information that, in the judgement of the person filing the statement, is pertinent to the correct evaluation of his financial situation within the public interest context inspired by this Act.

The Director may require the person bound to file the financial statement, to submit the information reflected in this Section with regard to those other members of the family unit of the person filing the statement which the Director judges pertinent to correctly evaluate the financial situation of the public official or employee.

Section 4.5—Exceptions in specific cases

A. The Director of the Office of Government Ethics shall be empowered by request of the interested person, to exempt the same from the requirement of including specific data in the statement, or authorize some modification in its presentation, if he concludes that strict application of the legal requirement would unreasonably injure the petitioner, or a third party, and that the purposes of this Act will not be thwarted by the exception.

B. In cases of security or other pressing public interest, the Director may exempt certain persons from complying with the special provisions of this Act, or establish special conditions and procedures for such persons.

C. Every exception authorized under this Section, shall be limited in its scope to that which is strictly necessary to prevent the abovestated injury.

Section 4.6—Oath; Auditing

The financial statements required by this Act shall be sworn to by the public official or employee whose status it describes.

The Director may require that the financial statement be audited by a certified public accountant. If an auditing of the statement is required, the Office may reimburse the person for the cost of the services rendered by a certified accountant, subject to the requirements which the Director established by regulations.

Section 4.7—Delivery of the Statements

The financial statements required by this Act shall be submitted to the Office of Government Ethics or to the official on whom it is delegated, by personal delivery, or certified mail.

Section 4.8—Custody and Public Access to the Financial Statements required by this Act.

A. The Director may allow the inspection of, and access to the financial statements filed, pursuant to the provisions of this Act, only when they are final, and the interested person demonstrates to the Director that the information is needed to submit additional data that reveals a possible violation of the provisions of this Act. The Director shall provide a copy of the final financial statements, free of charge, when required by government agencies as part of an official function.

B. Every person who obtains access to part or all of a financial statement filed before the Office, may use the information thus obtained solely for purposes related to the objectives of this Act.

C. The use of part or all of a financial statement filed before the Office under this Act for the purpose of obtaining some commercial gain, to determine or establish the credit rating of a person, or to attempt to obtain some special benefit foreign to the objectives of this Act, is hereby prohibited.

D. The provisions of paragraph A of this Section notwithstanding, the public inspection of these financial statements shall not be permitted, nor copies of them shall be furnished until the interested party has filed a written request with the following information:

1. name, address, and occupation of the petitioner.
2. name and address of the person, organization, or government dependency for whom the statement is requested.
3. that the petitioner knows of the restrictions and prohibitions regarding the use of these statements.

E. Any person who furnishes the data contained in the financial statements filed before the Office, or allows them to be copied without the Director's authorization, shall be guilty of a misdemeanor that shall be punished by a fine of five hundred (500) dollars.

Section 4.9—Conservation of Financial Statements

The Office shall establish, through regulations, the period of time during which the Office shall conserve and maintain the financial statements filed pursuant to the provisions of this Act, available to the public. The Office shall be bound to conserve the statements for a period of not less than three (3) years after the

public official has ceased in his office. No document may be destroyed when it is needed to complete an investigation that has been initiated.

Section 4.10—Actions Regarding the Statement

Once each financial statement required by this Chapter is received, the Office shall study and examine it within the sixty (60) days following its filing, for the following purpose:

A. If, after studying and analyzing the financial statement, the Director determines based on the information contained in the statement, that the person submitting it has complied with the applicable laws and regulations, he shall so state it on the financial statement and sign it.

B. If the Director determines that it is necessary to submit additional information, he shall advise the person who filed the financial statement of the additional information needed, and require him to file it within a term of not more than thirty (30) days after said notice. If, in his opinion, based on the information submitted, the person is not complying with the applicable laws and regulations, he shall inform the person thereof, specifically indicating those aspects in which it is deemed that the statement does not meet the legal requirements. In the notice, the Director shall inform the person of his right to submit his contentions in writing, and also to request a hearing before the Office, if he wishes it. The Director shall prepare a preliminary determination, based on all the information submitted, which shall be served to the person, and shall provide a reasonable time that shall not exceed thirty (30) days for him to answer it. After considering the ~~information~~ ~~the~~ ~~statement~~, ~~is~~ ~~proper~~, and shall render a final determination which shall be considered a public document. The Director shall maintain the strict confidentiality of the revision processes prior to the final

report. If indicated, the Director, shall take the pertinent action, directly, or with the aid of the Secretary of Justice, in the event that said report reveals that there has been a violation of the law which requires penal, or any other kind of action.

C. In every case in which, upon comparing the most recent statement with the previous one, some increment or substantial change in some item is detected for which the Director considers there is no satisfactory explanation, the informant shall be required to give an explanation, and demonstrative evidence of the legal source thereof. If the Director deems it necessary, he shall proceed to make the corresponding investigation. If after the public servant has submitted the evidence and the pertinent explanation, the Director deems them to be unsatisfactory, he may take pertinent action directly, or with the aid of the Secretary of Justice.

D. When dealing with the financial statements of members of the Legislature, the Director shall receive and evaluate the statements to verify that the information is complete. Once he verifies that the information is complete, he will determine that the document is final, so that it can be deemed a public document. When there is the possibility in the Director's judgment that an official of the Legislative Branch has violated the provisions of this Chapter, the Director shall send the financial statement to the corresponding Body so that the appropriate action may be taken.

Section 4.11—Noncompliance or Misrepresentation

A. Penal Action

1. Any person who, knowingly and wilfully, misrepresents or fails to file or divulge any substantial information which this Chapter requires him to file, shall be guilty of a felony, and upon conviction, shall be punished for each violation, with a fixed term of imprisonment of one (1) year or a fine of two thousand (2,000) dollars, or both penalties, at the discretion of the Court.

If there are aggravating circumstances, the fixed term thus established may be increased to a maximum of two (2) years, or the fine may be increased to five thousand (5,000) dollars. If there are extenuating circumstances, it may be reduced to a minimum of six (6) month and one day, or to one thousand (1,000) dollars.

2. A person thus convicted shall be disqualified to hold any public office or employment, subject to the provisions of Section 3.4 of Act No. 5 of October 14, 1975 as amended, known as the Public Service Personnel Act of Puerto Rico.

3. The crimes established by this Chapter shall prescribe in five years.

4. The convicted person shall not have the benefit of a suspended sentence.

B. Civil Action

1. The Secretary of Justice shall have the power to request the Superior Court to issue an injunction to prevent any violation of this Chapter, and to file the proper action to collect civil sanction imposed in behalf of the State.

2. Any person who receives monetary gain as a result of a violation of this Chapter, shall be bound to pay the State a sum equal to three times the value of the monetary gain received, as a civil sanction for his noncompliance.

3. In addition to the abovementioned penal and civil sanctions, the violation of any of the provisions of this Chapter may be penalized, in applicable cases, with any of the following administrative sanctions imposed

- a. written reprimand
- b. suspension from employment and salary
- e. dismissal or firing

CHAPTER V—FINAL PART

Section 5.1—Capacity to promote investigations

A. Any private citizen, or any official or employee of the Commonwealth of Puerto Rico may request the Office to initiate an investigation, through a written and sworn complaint, under any of the provisions of this Act. To that end, the promoter must state all the facts on which he bases his belief that the investigation is proper in his complaint.

B. Within sixty (60) days following the date on which the complaint was filed, the Office shall perform an evaluation and shall advise the complainant of the action it intends to follow. If the Office deems it is unnecessary to carry out an investigation, it shall so notify the complainant within the term described above.

C. If the Office deems that it is proper to conduct an investigation, it must be completed within one hundred and twenty (120) days following the date the complainant was advised of the action that was to be taken. Once the investigation is concluded, the office shall decide if it will proceed judicially or administratively against the accused official, or employee, or if it will exempt him from subsequent responsibility.

Section 5.2—Judicial Review

Any public official that is affected by any decision, resolution, order or action by the Office, shall be entitled to judicial review by filing the corresponding petition before the Superior Court of Puerto Rico, with a notice to the Office, within thirty (30) days after being served the decision, order or action. The findings of facts of the Office, which are supported by substantial evidence based on the total record, shall be binding on the Court.

Section 5.3—Annual Reports

The Office of Government Ethics shall render a detailed report to the Governor and to the Legislature, no later than June 30 of each year, that includes the following information among any other:

- a) a detailed description of the work carried out by the Office during the previous year, itemizing its budget and the use of resources.
- b) total number of cases filed, pending, and resolved, during the period covered by the report, regarding possible violations of the rules, ethics, or other standards of conduct that apply to government officials and employees.
- c) the total number of financial statements filed during the period covered by the report, indicating the cases which have been subject to an investigation, have been required to present additional information by the Office, or have been identified to be of a serious nature.
- d) civil or criminal actions prosecuted by the Office or the Secretary of Justice for alleged violations of the provisions of this Act during the period covered by the report.
- e) corrective measures instituted by the Office in behalf of other government officials and agencies and the final action taken.
- f) a description of the systems established to inform the Secretary of Justice about alleged violations to the conflicts of interest laws and financial statements, and an evaluation of their efficiency.
- g) recommendations suggested by the Office to improve the effectiveness of the legal provisions which govern conflicts of interest and the standards of conduct of public officials and the employees.

Section 5.4—Appropriation of Funds

The sum of two hundred and fifty thousand (250,000) dollars is hereby appropriated from unencumbered funds in the Commonwealth Treasury to the Office of Government Ethics, to initiate and perform the functions of this Office during fiscal year 1985-86. For subsequent fiscal years, the Governor shall include the estimated operating expenses for the Office in the Budget without reviewing them.

Section 5.5—None of the contents of this Act shall be interpreted or applied in any way that shall limit or be in conflict with the power of Legislature to discipline its members, or to conduct impeachment proceedings, nor with the powers of the Commonwealth Committee to Settle Municipal Complaints, nor with the power of government agencies to discipline the public servants that work in them.

Section 5.6—Separability of the Provisions

If any clause, paragraph, Section, Chapter, or part of this Act, is declared unconstitutional by a Court of competent jurisdiction, the sentence handed down shall not affect nor invalidate the rest of this Act, and its effect shall be limited to the clause, paragraph, Section, Chapter, or part declared unconstitutional.

Section 5.7—Repeal

Acts No. 110 of May 12, 1943, and No. 28 of June 8, 1948 as amended, are hereby repealed. This repeal will not affect the procedures established, or that could be established under the provisions of these Acts.

Section 5.8—Effectiveness

This Act shall take effect sixty (60) days after its date of approval, except for the provision regarding to the appropriation of funds, which shall take effect July 1, 1985.

TAB M

**Funcionarios y Empleados Públicos
de la Rama Ejecutiva**

AREA DE INFORMES FINANCIEROS

Informe Financiero



Honrando la Confianza del Pueblo

Avenida Roosevelt 185, Edif. Roosevelt Plaza, Hato Rey, Puerto Rico

P.O. Box 194629- San Juan, Puerto Rico 00919-4629

Tel. 766-4400

Fax 754-0977

Página de Internet: <http://www.tld.net/users/ofetica>

E-mail: ofetica@tld.net

APENDICE EXPLICATIVO

Instrucciones para completar los informes financieros que deberán rendir determinados funcionarios y empleados públicos de la Rama Ejecutiva

AÑO NATURAL 1997

A. BASE LEGAL E INFORMACION GENERAL

La Ley de Etica Gubernamental del Estado Libre Asociado de Puerto Rico requiere que determinados funcionarios y empleados públicos sometan informes financieros anualmente. Estos serán revisados por la Oficina de Etica Gubernamental para determinar si cumplen con la Ley y con los reglamentos de esta Oficina.

La Oficina de Etica Gubernamental ha preparado este formulario de informe financiero conforme a la facultad que le confiere el Artículo 4.3 de la Ley.

No rendir el informe, falsificar o dejar de incluir la información requerida constituye un delito grave. En estos casos, o cuando se rindan fuera del término establecido por Ley, la Oficina se reserva el derecho de radicar una querrela bajo la Ley de Procedimiento Administrativo Uniforme (Ley Núm. 170 de 12 de agosto de 1988, según enmendada). Procederá, entonces, a celebrar una vista adjudicativa en la cual el querellado tiene unos derechos según constan en la mencionada Ley y en las Reglas de Procedimiento para Vistas Adjudicativas (Núm. 4749, Departamento de Estado PR, 5 de agosto de 1992). Al querellado puede imponérsele una multa administrativa hasta de \$5,000 por cada infracción.

Un informe se considerará incompleto si cualquier sección se deja en blanco. Si el informe se somete sin firmar o juramentar se considerará como no radicado. Este informe deberá llenarse preferiblemente en maquinilla o en su lugar deberá usarse tinta indeleble y letra de molde. La auditoría y revisión de estos informes financieros se realizará de conformidad con las disposiciones que se establecen en el Artículo 4.10 de la Ley de Etica Gubernamental y en la Parte E del Reglamento sobre Radicación de Informes Financieros por Funcionarios y Empleados de la Rama Ejecutiva. En dichas disposiciones se autoriza a la Oficina de Etica Gubernamental a solicitar información adicional, la cual puede comprender años anteriores a la fecha de radicación del informe financiero.

El informe financiero constituye una protección tanto para el funcionario o empleado que lo somete como para el Gobierno de Puerto Rico. Este provee mecanismos para determinar la existencia de conflictos, sean éstos reales, aparentes o potenciales, entre sus responsabilidades oficiales y sus intereses privados. La información requerida por

Ley en el informe financiero permite al funcionario y a la Oficina de Etica Gubernamental aplicar las acciones remediales para evitar o terminar dichos conflictos.

B. CONFIDENCIALIDAD

Los informes financieros que se someten en la Oficina de Etica Gubernamental son confidenciales. El acceso al público está condicionado por la Ley de Etica Gubernamental. Sólo podrá permitirse la inspección y acceso cuando estos informes sean finales, hayan sido revisados y firmados por el Director Ejecutivo de esta Oficina, y cuando el solicitante demuestre, de acuerdo con unos requisitos legales, que necesita la información para someter datos adicionales que revelen una posible violación a las disposiciones de la Ley de Etica Gubernamental.

La Ley de Etica Gubernamental prohíbe el uso de un informe financiero con el fin de obtener algún beneficio económico, para determinar el crédito de una persona o para tratar de conseguir algún beneficio ajeno a los objetivos de esta Ley.

La violación a esta prohibición de Ley constituye delito grave.

C. QUIENES DEBEN RENDIR EL INFORME FINANCIERO

La Ley de Etica Gubernamental en su Artículo 4.1(a) y el Reglamento sobre Radicación de Informes Financieros por Funcionarios y Empleados de la Rama Ejecutiva en su Artículo 4.201 enumeran y explican los puestos públicos cuyos incumbentes están obligados a rendir informes financieros ante la Oficina de Etica Gubernamental. **Usted ocupa un puesto que conlleva la obligación de presentar el informe financiero y por ello deberá llenar el mismo.**

D. CUANDO DEBE SOMETERSE EL INFORME Y PERIODO QUE CUBRE

Funcionario o empleado en el puesto - Funcionario o empleado que sometió el informe el año natural anterior y continúa en el tipo de cargo que lo obliga a someter un informe financiero. Rendirá un informe para el año natural 1997 el 1 de mayo de 1998 o antes.

Toma de posesión - Deberá someter dentro de los 60 días siguientes a la toma de posesión, un informe que cubra el año natural anterior más la información relativa al tiempo transcurrido del año hasta la fecha en que comenzó en su puesto.

Cese - Deberá presentar un informe financiero por el año natural anterior-si aún no lo ha sometido-y, en sección separada, el tiempo transcurrido del año hasta la fecha de cese.

Nominados - Si usted fue nominado por el Gobernador para ocupar un puesto que requiere confirmación de la Asamblea Legislativa, rendirá el informe dentro de los 15 días siguientes a la fecha en que dicha nominación se envíe a la Asamblea Legislativa.

Interinato - Deberá radicar un informe financiero aquel funcionario o empleado que ocupe el puesto por más de 60 días. Dicho informe deberá quedar radicado dentro de los 120 días desde la fecha a partir de la cual se ocupó el puesto interinamente. Dicho informe cubrirá el último año natural y, en sección separada, el tiempo transcurrido del año hasta la fecha en que comenzó interinamente.

E. DONDE DEBE PRESENTARSE EL INFORME FINANCIERO

En la Oficina de Etica Gubernamental localizada en la Avenida Roosevelt Núm. 185, esquina Calle Trinidad, Edificio Roosevelt Plaza, Piso 3, Hato Rey, mediante entrega personal. También puede someterse por correo certificado al Apartado 194629, San Juan, P.R. 00919-4629.

F. INFORMACION ESPECIFICA SOBRE EL FORMULARIO

En varias partes del formulario se requiere informar datos correspondientes al cónyuge y demás miembros de la unidad familiar. Esta información se proveerá independientemente de que el matrimonio se haya llevado a cabo bajo el régimen de capitulaciones matrimoniales o que exista una relación de concubinato. Sin embargo, no es necesario informar datos sobre su cónyuge, si viven separados con intención de divorciarse o si viven permanentemente separados.

Es necesario llenar cada sección del informe. Si no tiene información que revelar en cualquier sección, deberá indicar "No aplica".

Aunque la información que debe suministrarse se indica en cada página del formulario, a continuación presentamos instrucciones adicionales correspondientes a algunas secciones del mismo.

Ocupaciones fuera del Gobierno de Puerto Rico

Usted deberá indicar todos los cargos que ocupó durante el período del informe como oficial, director, síndico, socio, propietario, representante, empleado o consultor de cualquier:

1. corporación, compañía, firma, sociedad, fideicomiso u otra clase de organización comercial;
2. organización con fines no pecuniarios;
3. organización laboral;
4. institución educativa; u
5. otra institución que no sea el Gobierno de Puerto Rico

Indique el nombre, dirección y una breve descripción de la organización, título u otra descripción funcional del puesto que ocupó y las fechas en que lo ha ocupado. Esté seguro de informar cualquier ingreso que reciba por estos cargos.

En la sección sobre pinturas, objetos de arte, antigüedades, colecciones, etc., usted deberá informar el valor agregado de cada renglón.

Ejemplo:

	Valor agregado
Pinturas	3,000
Objetos de Arte	2,800
Colecciones individuales:	
Sellos	1,200
Monedas	2,000

G. DEFINICIONES

1. Unidad familiar

Incluye al cónyuge del funcionario, a los hijos dependientes de éste o a aquellas personas que comparten la residencia legal del funcionario, o cuyos asuntos financieros están bajo el control de *jure* o de *facto* del funcionario. Es decir, cuando el declarante controle o atienda los asuntos financieros de una persona con la determinación de un tribunal o sin ella. Incluye, además, una pareja que comparta la residencia legal, sin que necesariamente estén casados entre sí.

El concubinato es la unión de hecho entre hombre y mujer para hacer vida conyugal sin cumplir los requisitos y normas que se imponen para el matrimonio. Se requiere que se produzca una relación permanente, estable y no ocasional entre

los concubinos, como si fueran esposos, y compartan la residencia legal. La relación de concubinato no es incompatible con el hecho de que los que así viven puedan estar casados con otra persona.

2. Dependiente

a) Cualesquiera de las siguientes personas que para el año natural objeto del informe del funcionario hayan recibido de éste más de la mitad del sustento:

- 1) Un hijo menor de 21 años de edad.
- 2) El padre o la madre del funcionario que rinde el informe.

b) Significa también cualquier persona que en el año natural objeto del informe haya recibido del funcionario más de la mitad de su sustento, tales como:

- 1) Un hijo que durante dicho año natural haya tomado por lo menos un semestre escolar de estudios universitarios, como estudiante regular en una institución universitaria reconocida por las autoridades educativas de Puerto Rico, hasta que obtenga su grado universitario y siempre que su edad no exceda a los 25 años.
- 2) Cualquier persona a quien el funcionario provea su sustento por estar mental o físicamente incapacitada.
- 3) Cualquier persona que tenga 65 años o más de edad.

3. Activo

Propiedad o derechos que se poseen con un valor determinado o estimado en dinero. Esto puede ser un objeto físico, tangible o intangible.

4. Pasivo

Deudas u obligaciones por pagarse.

5. Valor corriente estimado

Se ha establecido que la base para la presentación de estados financieros personales es el valor corriente estimado. Este valor se define como la cantidad por la cual la propiedad puede ser intercambiada entre comprador y vendedor, estando ambos bien informados y sin estar forzados a comprar o vender. Los costos de disposición, si son considerables, deben incluirse para estimar el valor corriente.

6. Método de Valoración de los Activos

Usted puede usar una de estas opciones para valorar sus activos:

Opción 1 - Un estimado del valor del activo hecho de buena fe, si el valor exacto no se conoce o no puede obtenerse fácilmente.

Opción 2 - Valor establecido de acuerdo con una tasación recientemente hecha al activo.

Opción 3 - El valor en los libros al cierre del año de acciones no cotizadas en el mercado o el valor en la bolsa de valores al final de año de las acciones corporativas o su valor nominal (*face value*).

Opción 4 - El valor nominal de su interés en cualquier sociedad o cualquier otro activo mantenido en común.

Opción 5 - El valor (*equity value*) de su interés o participación en un negocio propio.

Opción 6 - Valor actual (por ejemplo, en el caso de, cuentas de ahorro) o cualquier otra indicación de valor reconocida (tal como la última venta en una bolsa de valores).

Deberá informar el método utilizado para valorar los activos y ser consecuente todos los años.

7. Interés o participación

La propiedad en su totalidad o en parte de un negocio o bien.

8. Contrato

Significa un convenio o negocio jurídico para hacer o dejar de hacer determinado acto, otorgado con el consentimiento de las partes contratantes, en relación con un objeto cierto que sea materia del contrato y por virtud de la causa que se establezca.

H. REGALOS

El Artículo 4.4 de la Ley de Etica Gubernamental, según enmendado por la Ley 150 de 22 de diciembre de 1994 quedó modificado mediante un inciso adicional (Inciso 14) que requiere lo siguiente:

Una relación de todo regalo recibido, excluyendo pago de transportación, comidas, alojamiento y entretenimiento-con indicación del nombre y dirección del donante-cuyo valor agregado por donante exceda de \$250 por año y que haya sido recibido de personas que no tengan parentesco de **por lo menos el cuarto grado de consanguinidad o segundo de afinidad** y que no hayan constituido una muestra de hospitalidad estrictamente personal o familiar.

Para proveer dicha información es necesario que:

- 1) El regalo exceda de \$250.
- 2) El regalo no haya constituido una muestra de hospitalidad estrictamente personal o familiar.
- 3) El donante no tenga parentesco con el informante de por lo menos el cuarto grado de consanguinidad o segundo de afinidad.

De estar presentes los dos primeros requisitos, la OEG puede ofrecer asesoramiento para determinar si se cumple con el tercero.

I. ALGUNAS INDICACIONES ESPECIFICAS PARA AYUDARLE A COMPLETAR SU INFORME

Sección 1 - Información General

Indique el cargo en el Gobierno por el cual somete su informe financiero.

Indique, además, la categoría de informe. Si usted es el incumbente del puesto durante el año 1997, marque el encasillado **Funcionario Actual**. Si usted ocupó uno de los cargos sujetos al requisito de someter informes financieros por más de 60 días durante el año 1997 y cesó en el mismo durante ese periodo o uno posterior, deberá someter un informe por el periodo del 1 de enero de 1997 hasta la fecha en que terminó en el mismo. En este caso marcará el encasillado **Funcionario que cesa**.

Si usted toma posesión de alguno de los puestos indicados en el año 1998, someterá un informe que incluya del 1 de enero de 1997 hasta la fecha en que tomó posesión del mismo en el 1998. En este caso marcará el encasillado **Funcionario que tomó posesión** e indicará la fecha en el espacio provisto.

Si usted fue **nominado** para ocupar un cargo que requiera la confirmación de la Asamblea Legislativa, someterá, dentro de los 15 días siguientes a la fecha en que el Gobernador notificó su designación, un informe financiero por el periodo del 1 de enero de 1997 hasta la fecha de dicha designación.

Sección 10 - Dinero en Efectivo

Significa dinero en mano, en poder del declarante a la fecha del informe; bien sea en su persona, guardado en su casa, en cajas de seguridad, etc.

Sección 19 - Bien mueble

Todos los bienes que se pueden transportar por sí mismos (animales) o por una persona. Incluye, entre otros, vehículos y camiones, equipo pesado, material de construcción, caballos, ganado, equipo de refrigeración, equipo computarizado y otros.

Sección 21 - Mobiliario y enseres

Incluye todos los muebles y enseres del hogar tales como: juegos de sala, comedor y cuarto, equipos de entretenimiento, acondicionadores de aire, enseres eléctricos y otros.

Sección 23 - Otros activos

Incluya bienes muebles e inmuebles como negocios, botes, yates, calentadores solares, cisternas, tormenteras, plantas eléctricas, antenas parabólicas, equipo pesado, material de construcción, caballos, ganado, equipo de computadora, etc., no incluidos en secciones anteriores.

Sección 27 - Trato preferente

Se refiere a tratamiento especial o privilegiado al compararse con el que reciben otros deudores del mismo acreedor en circunstancias similares por el mismo tipo de deuda.

Sección 29 - Anejos

De usted incluir algún documento (anejo) con su informe, deberá indicarlo en esta sección.

Para más información o ayuda sobre cómo completar este formulario, puede comunicarse con el Area de Informes Financieros de la Oficina de Etica Gubernamental al 766-4400.

Código

OFICINA DE ETICA GUBERNAMENTAL DE PUERTO RICO

INFORME FINANCIERO DE FUNCIONARIOS Y EMPLEADOS PUBLICOS DE LA RAMA EJECUTIVA

PERIODO DEL INFORME: Desde _____ Hasta _____

Sección 1

INFORMACION GENERAL

Form with fields: Apellidos, NOMBRE (Nombre, Inicial), SEGURO SOCIAL, ESTADO CIVIL (Soltero, Casado, Relación de concubinato), CAPITULACIONES MATRIMONIALES (SI, NO, NO APLICA), PROFESION, TELEFONO, DIRECCION POSTAL, DIRECCION RESIDENCIAL, RESIDENCIA, TRABAJO.

FUNCIONARIO ACTUAL :

Fecha de elección o nombramiento al puesto por el cual se somete el informe ____/____/____
Día Mes Año

Form with fields: Funcionario: Actual, Cese, Toma Posesión, Nominado; Fecha: Día, Mes, Año.

En caso de cese, indique el lugar actual de trabajo y puesto

Puesto por el cual somete el informe

Nombre y dirección del organismo o entidad

JURAMENTO

Affidávit Núm. _____

Juro que la información provista en este informe-el cual consta de ____ páginas-y los apéndices que se acompañan son ciertos, completos y correctos según mi mejor entendimiento, bajo apercibimiento de ser procesado por el delito de perjurio, según se define en el Artículo 225 del Código Penal de Puerto Rico.

Jurado y firmado ante mí por _____ mayor de edad, _____, vecino de _____, Estado Civil _____, Ocupación _____, En _____, Puerto Rico, el ____ de _____ de 19 ____.

FIRMA DEL FUNCIONARIO

NOTARIO O FUNCIONARIO AUTORIZADO POR LEY

PARA USO EXCLUSIVO DE LA OFICINA DE ETICA GUBERNAMENTAL

Basados estrictamente en la información contenida en el informe financiero sometido por el declarante y luego de su evaluación y revisión opinamos que el mismo cumple con las Leyes y Reglamentos aplicables.

Fecha

Director Ejecutivo o su Representante Autorizado

Sección 2

INFORME FINANCIERO RAMA EJECUTIVA 1997

PUESTOS OCUPADOS POR USTED EN EL GOBIERNO DURANTE LOS ULTIMOS CUATRO AÑOS

AGENCIA	PUESTO	DESDE (MES-AÑO)	HASTA (MES-AÑO)
1.			
2.			
3.			
4.			

Sección 3

OCUPACIONES FUERA DEL GOBIERNO

Organización (nombre y dirección)	Clase de organización	Participación o interés	Cargo que ocupa	Desde (mes-año)	Hasta (mes-año)

Sección 4

CONTRATOS

Indique los contratos o negocios realizados por usted o algún miembro de su unidad familiar con cualquier organismo público. Incluya aquéllos llevados a cabo directamente o a través de empresas privadas en las que usted o un miembro de su unidad familiar tenga participación o interés económico.

Nombre del miembro de la unidad familiar (incluyendo declarante)	Nombre de la empresa en la cual tiene participación o interés económico	Expresar la relación del miembro con la empresa	Nombre de la dependencia a la que se le prestó servicios	Naturaleza del trabajo que realizó o servicio obtenido	Período	
					Desde	Hasta

Iniciales _____

INFORME FINANCIERO RAMA EJECUTIVA 1997

CONTRATOS CON PERSONAS QUE LE PRESTAN SERVICIOS A SU AGENCIA

Sección 5

Indique los contratos que usted o algún miembro de su unidad familiar en su calidad personal, tenga con personas o entidades que le prestan servicios a su agencia.

Nombre del funcionario o miembro de la unidad familiar	Persona o entidad que presta servicios a su agencia	Naturaleza del contrato en su calidad personal	Servicios que la persona o entidad presta a su agencia	Período que cubre

Sección 6

**REEMBOLSOS, ACUERDOS, CONTRATOS Y ARREGLOS
PARA REMUNERACION FUTURA**

Reembolsos

Incluya los reembolsos de \$250 o más recibidos por usted y su unidad familiar, excepto de fuentes gubernamentales.

Origen (Nombre y dirección)	Relación con su agencia	Breve descripción	Valor
1.			
2.			
3.			
4.			

INFORME FINANCIERO RAMA EJECUTIVA 1997

Sección 7

Acuerdos, Contratos y Arreglos

Informe sobre los acuerdos, contratos y arreglos para empleo futuro, licencia sin sueldo, continuación de pago o beneficios por parte de su patrono anterior. Divulgue dicha información aunque no se haya llegado a un acuerdo final sobre la misma y someta evidencia.

Condiciones o términos de cualquier acuerdo, contrato o arreglo	Partes	Fecha (mes, año)
1.		
2.		
3.		
4.		
5.		

Iniciales _____

INFORME FINANCIERO RAMA EJECUTIVA 1997

Sección 8

INFORMACION SOBRE SU UNIDAD FAMILIAR

(Véanse páginas 4 y 5 de instrucciones)

Personas que componen su unidad familiar

(Si no vive bajo su techo, indique la dirección bajo el nombre)

Nombre	Parentesco	Núm. Seguro Social	Lugar de trabajo	Puesto que ocupa	Rinde informe financiero		
					RE	RL	RJ

RE = Rama Ejecutiva

RL = Rama Legislativa

RJ = Rama Judicial

Sección 9

INFORME FINANCIERO RAMA EJECUTIVA 1997

INGRESOS

Incluya el ingreso bruto, exento o tributable de un mismo origen, que exceda de \$100, de usted y de su unidad familiar. Tal ingreso incluye salarios, honorarios, comisiones, compensación por servicios prestados, pagos por pensión, liquidación de vacaciones en caso de cese, herencias o sucesiones, fideicomisos, intereses, dividendos, premios, ayudas gubernamentales, donaciones, producto de la renta de bienes muebles e inmuebles y otros ingresos. Incluya, además, el volumen de las ventas de cualquier negocio que posea usted o algún miembro de la unidad familiar. (Complete el formulario Anejo 1). Esta página resume todos los ingresos de cualquier fuente.

	Origen (nombre y dirección)	Clase de ingreso	Concepto (breve descripción)	Fecha recibido	Cantidad recibida
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
				TOTAL	[]

INFORME FINANCIERO RAMA EJECUTIVA 1997

Sección 12

PARTICIPACIONES E INGRESOS EN FIDEICOMISOS, SUCESIONES O HERENCIAS, TANTO PERSONALES COMO DE SU UNIDAD FAMILIAR

(Describa los activos concernidos en las secciones correspondientes. Incluya copia de escritura de fideicomiso, planilla de caudal de relicto o declaratoria de herederos, según proceda.) Informe los contratos del fideicomiso o sucesión con entidades públicas en la Sección 4.

Nombre del fideicomiso, fideicomitente o sucesión	Fecha de origen	Interés o participación (%)	Cuantía de su participación (valor \$)	Nombre del fideicomisario o beneficiario	Relación familiar	Nombre del fiduciario, albacea o administrador	Ingreso o beneficio recibido

TOTAL (Incluya los ingresos en la Sección 9).

|

INFORME FINANCIERO RAMA EJECUTIVA 1997

Sección 13

**INVERSIONES E INGRESOS EN ENTIDADES PRIVADAS Y GUBERNAMENTALES
PROVENIENTES DE ACCIONES, BONOS, OPCIONES Y OTROS NEGOCIOS (Incluya aquéllas cuyo valor en conjunto excedan de \$1,000)**

Nombre de la entidad	Número de acciones, bonos u opciones	Fecha de adquisición	Venta	Costo	Valor corriente estimado	Método de valoración*	Precio de venta	Ganancia (Pérdida)	Dividendos, intereses o ingresos recibidos
1.									
2.									
3.									
4.									

TOTAL (Incluya ingresos en la Sección 9) [] [] [] [] [] [] [] [] []

*Véanse los métodos de valoración en la página 4 del Apéndice Explicativo.

Nota: Para identificar cada activo o ingreso utilice las siguientes letras:

AP = Acciones Preferidas	AC = Acciones Comunes	O = Opciones
B = Bonos	NT = Notas del Tesoro (Treasury notes o Bills)	D = Dividendos
IT = Intereses	IG = Ingresos	

Nota: Incluya acciones o participación en cooperativas. Si el valor en conjunto de las inversiones e ingresos exceden de \$1,000, tiene que incluir cada empresa o negocio relacionado.

INFORME FINANCIERO RAMA EJECUTIVA 1997

Sección 14

POLIZAS DE SEGURO DE VIDA (Incluya únicamente las que sean liquidables o que puedan utilizarse para realizar cualquier transacción comercial)

Compañía aseguradora	Valor nominal (<i>face value</i>)	Valor en efectivo acumulado (<i>cash surrender value</i>)	Préstamos a la póliza	Beneficiario	Dueño de la póliza	Prima anual

Sección 15

VEHICULOS DE MOTOR Incluya aquellos vehículos que poseía durante el período del informe. También aplica a vehículos poseídos en calidad de arrendamiento financiero (*leasing*).

	Marca y número de registro	Firma o persona * de quien lo adquirió o alquiló	Modelo y año	Costo	Valor corriente estimado	Balance de la deuda**
a. Adquiridos en años anteriores al período del informe						
b. Adquiridos durante el período del informe						

*Si contrata o realiza negocios con su agencia, infórmelo en la Sección 5. **Asegúrese de que coincida con la información en la Sección 25 .

Iniciales _____

INFORME FINANCIERO RAMA EJECUTIVA 1997

Sección 16

PINTURAS, OBJETOS DE ARTE, ANTIGUEDADES, COLECCIONES, ETC

	Descripción	Costo	Valor corriente estimado
a. Adquiridos en años anteriores al período del informe			
b. Adquiridos durante el período del informe*			

*Si la persona de quién los adquirió, contrata o realiza negocios con su agencia, infórmelo en la Sección 5.

Sección 17

PROPIEDADES INMUEBLES (Incluya residencia principal, secundaria y cualquier otro bien inmueble)

	Descripción	Localización exacta	Fecha de adquisición	Costo	Valor corriente estimado	Deuda original*	Balance actual*
a. Adquiridos en años anteriores al período del informe							
b. Adquiridos durante el período del informe							

TOTALES

[] [] [] []

*Asegúrese de que coincida con la información en la Sección 24. Describa las transacciones realizadas con las propiedades inmuebles en la Sección 26.

Sección 17 A

MEJORAS

Complete esta sección si realizó mejoras permanentes a su residencia o negocio durante el período del informe. Incluya toda mejora realizada que aumente el valor de la propiedad o la capacidad de rendimiento o productividad del inmueble.

Fecha	Costo	Descripción	Persona o entidad que realizó el trabajo*	Deuda original**	Balance actual**

*Si contrata o realiza negocios con su agencia, infórmelo en la Sección 5. **Asegúrese de que coincida con la información en las secciones 24 ó 25, donde aplique.

INFORME FINANCIERO RAMA EJECUTIVA 1997

Sección 18

Si alguna de estas propiedades inmuebles le produce renta, favor de llenar el encasillado que sigue. En caso de estar arrendada bajo un programa de renta subsidiada, mencione el nombre de la entidad gubernamental o municipio e incluya copia del contrato.

Localización	Nombre del arrendatario*	Pago mensual**

*Si contrata o realiza negocios con su agencia, infórmelo en la Sección 5. **Asegúrese de que coincida con la información en la Sección 9.

Sección 19

Bienes muebles que producen renta por alquiler o beneficios mediante la realización de negocios. Incluya contratos con el Gobierno y municipios en esta sección y en la Sección 4.

Descripción del bien mueble	Nombre del arrendatario o parte contratante*	Fecha e importe total del contrato

Incluya ingresos en la Sección 9. Véase instrucción en página 8. *Si contrata o realiza negocios con su agencia, infórmelo en la Sección 5.

Sección 20

Si usted no reside en casa propia indique:

- Alquiler
- Familiares
- Otros _____
- No pago nada
- Razón _____

Nombre y dirección del familiar o de la persona a quien hace el pago*	Pago mensual

*Si contrata o realiza negocios con su agencia, infórmelo en la Sección 5.

INFORME FINANCIERO RAMA EJECUTIVA 1997

Sección 21 MOBILIARIO Y ENSERES ELECTRICOS(valor total)

Sección 22 JOYERIA (valor total)

	Costo	Valor corriente estimado
a. Adquiridos en años anteriores al período del informe*		
b. Adquiridos durante el período del informe*		

	Costo	Valor corriente estimado
a. Adquiridos en años anteriores al período del informe		
b. Adquiridos durante el período del informe		

TOTAL [] []

TOTAL [] []

*Si la persona de quién los adquirió contrata o realiza negocios con su agencia, infórmelo en la Sección 5. Véase instrucción página 8.

Sección 23 OTROS ACTIVOS (muebles e inmuebles)

	Descripción	Fecha de adquisición	Costo	Valor corriente estimado
a. Adquiridos en años anteriores* al período del informe				
b. Adquiridos durante* el período del informe				

TOTAL [] []

Véase instrucción en página 8. *Si la persona de quién los adquirió, contrata o realiza negocios con su agencia, infórmelo en la Sección 5.

INFORME FINANCIERO RAMA EJECUTIVA 1997

**PASIVOS
(DEUDAS U OBLIGACIONES)**

Informe toda deuda u obligación mayor de \$1,000 (Incluya las liquidadas o reducidas a menos de \$1,000 durante el período que cubre el informe tanto suyas como de su unidad familiar.)

**Sección 24
DEUDAS HIPOTECARIAS**

Acreeedor	Importe original	Balance actual	Tasa interés	Pago mensual	Vencimiento	Colateral
1.						
2.						
3.						
4.						
5.						
TOTALES		[]		[]		

Sección 25

DEUDAS U OBLIGACIONES NO HIPOTECARIAS

No olvide las deudas con el Gobierno (Departamento de Hacienda, Centro de Recaudaciones de Ingresos Municipales, Patentes y Arbitrios Municipales y otros) y por sentencias. Incluya evidencia de planes de pago, si aplica.

Acreeedor	Clase de obligación	Importe original	Balance actual	Pago mensual	Vencimiento	Colateral
1.						
2.						
3.						
4.						
5.						
TOTALES			[]	[]		

Iniciales _____

**INFORME FINANCIERO RAMA EJECUTIVA 1997
OTRAS TRANSACCIONES**

(Ventas, compras, permutas, etc., de bienes muebles e inmuebles)

Describa el tipo de transacción realizada. Incluya transacciones suyas y de su unidad familiar.

Sección 26

Nombre y dirección a quien se le compra o vende*	Descripción del activo	Clase de transacción	Fecha de		Costo	Precio de venta	Ganancia (Pérdida)
			Adquisición	Venta			

TOTALES

|| || |

*Si contrata o realiza negocios con su agencia, infórmelo en la Sección 5.

Sección 27

Trato preferente en deudas - *(Incluya, además, cancelaciones de deudas)* Indique las deudas en relación con las cuales reciba cualquier tipo de trato especial o privilegiado. Explique las razones para dicho tratamiento. Asegúrese de incluir dichas deudas en las secciones 24 ó 25, según proceda.

Sección 28

REGALOS (Pág. 7 del Apéndice Explicativo):

- Nombre y dirección del donante _____
- Razón del regalo _____
- Descripción y valor del regalo _____
- Relación del donante con el funcionario _____

Indique si el donante tiene, está en gestiones o pudiera tener algún tipo de relación con su agencia.

INFORME FINANCIERO RAMA EJECUTIVA 1997

Sección 29

ANEJOS INCLUIDOS (Describe cualquier documento adicional que acompañe al formulario de informe financiero e indique la sección a que corresponde.)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

Iniciales _____

Anejo 1

**OFICINA DE ETICA GUBERNAMENTAL DE PUERTO RICO
INFORME FINANCIERO RAMA EJECUTIVA 1997**

INFORMACION SOBRE VOLUMEN DE NEGOCIOS
(Anejo a la Sección 9 del Informe Financiero)

Para el año natural 19__ u otro período desde ____ 19__ hasta ____ 19__

Favor de completar la siguiente información:		
Núm. de Teléfono del Negocio	Número de Seguro Social Patronal	
Nombre del Individuo, Industria, Negocio u Oficina de Servicio		Número Identificación Municipal
Seguro Social del Dueño o Representante	Clase de Industria, Negocio o Servicio	Tipo de Negocio: <input type="checkbox"/> Individuo <input type="checkbox"/> Soc. <input type="checkbox"/> Corp.
Dirección Física del Negocio		
Fecha en que estableció el Negocio Mes: Día: Año:	Nombre del Dueño o Representante	
Puesto del Dueño o Representante		
Dirección Postal del Negocio		
Dirección Residencial del Dueño o Representante		
Dirección Postal de la Oficina Principal del Negocio, Industria u Oficina de Servicio		

	(a) Industria o Comercio	(b) Agricultura	(c) Profesiones	(d) Rentas	(e) Comisiones
Ventas Netas.	\$	\$	\$	\$	\$
Otros Ingresos					
Total Ingresos					
Costo de Ventas					
Ingreso Bruto					
Menos: Gastos de Operación y otros costos					
Ingreso Neto					

TAB N

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA**REGISTER OF MEMBERS' INTERESTS**

Issued in accordance with the Code of Conduct in regard to Financial Interests

DUE DATE: 5 NOVEMBER 1997

Notes on the disclosure of Information**1. Intention of the Code**

The intention of the Code is to ensure that South Africa's elected leaders maintain the highest standards of propriety and to ensure that their integrity and that of the political institutions that they serve are beyond question.

2. Confidentiality

All information in the confidential section of the register will be kept in strict confidence. Only the Registrar and his/her staff and Members of the Committee on Members' Interests, who are sworn to secrecy, have access to this information.

3. Basis of Disclosure

The success of this Code of Conduct depends on the integrity and good faith of those to whom it applies. Therefore where any doubt exists as to the scope and application, or meaning of any aspect of the code, the good faith of the Member concerned must be the guiding principle.

4. Queries and difficulties

Queries in regard to this form may be directed to

Ms Fazela Mahomed

The Registrar of Members' Interests.

Room V111 Tel 403 2477/403 2476

5. General

Date of information or disclosure in this form must reflect the interest held by the Member on the date of disclosure, or since becoming a Member of Parliament, whichever is shorter.

"Remuneration" means the receipt of benefits in cash or kind.

"Interests of Immediate Family". This code applies to any spouse, permanent companion or dependent child of any Member to whom this code applies, to the extent that the Member is aware of or entitled to disclose any registrable interest held by such person.

Information disclosed in regard to immediate family is kept in the confidential section of the Register, unless a Member at his/her own discretion decides otherwise.

Where insufficient space is provided, please provide details on a separate sheet of paper.

Information relating to Member's immediate family must be in the confidential section.

This document has three parts, Part A is the Public section, Part B is the sanction by the Member's political party for remuneration outside Parliament and Part C is the confidential section.

PLEASE FILL OUT LEGIBLY, IN BLOCK LETTERS AND WITH A BLACK PEN.

NAME OF MEMBER _____

SIGNATURE OF MEMBER _____

DATE OF DISCLOSURE _____

DATE RECEIVED _____

(office use only)

PART A

PUBLIC DISCLOSURE SECTION

1. SHARES AND OTHER FINANCIAL INTERESTS (4.3.1 OF CODE)

NUMBER OF SHARES	NATURE	NOMINAL VALUE	NAME OF COMPANY	DATE ACQUIRED

Note: Any share held in any private or public company must be disclosed.

2. REMUNERATED EMPLOYMENT OUTSIDE PARLIAMENT (4.3.2 OF CODE)

TO BE SANCTIONED BY YOUR POLITICAL PARTY IN WRITING (see part B)

NAME OF EMPLOYER	TYPE OF BUSINESS

Notes: The employment must not be incompatible with your function as an elected representative. The extent of remuneration must be disclosed. This may be done in the confidential section.

3. DIRECTORSHIPS AND PARTNERSHIPS (4.3.3 OF CODE)

DIRECTORSHIP/PARTNERSHIP IN ANY CORPORATE BODY	TYPE OF BUSINESS ACTIVITY

Notes: If remuneration is a result of this association, the directorship/partnership must be disclosed. The extent of remuneration must be disclosed. This may be done in the confidential section.

4. CONSULTANCIES OR RETAINERSHIPS (4.3.4 OF CODE)

NAME OF ORGANISATION	TYPE OF BUSINESS ACTIVITY	VALUE OF ANY BENEFITS DERIVED

Note: All consultancies and retainerships must be disclosed

5. SPONSORSHIPS (4.3.5 OF CODE)

SOURCE OF SPONSORSHIP	DESCRIPTION OF ASSISTANCE/SPONSORSHIP	EXTENT

Note: All sponsorships or assistance directly to a Member from non-party sources must be disclosed.

6. GIFTS AND HOSPITALITY (4.3.6 OF CODE)

DESCRIPTION	APPROX DATE	VALUE	SOURCE

Notes: Specify all gifts with a value and source in excess of R350 or gifts from a single source which cumulatively exceed the value R350 in any calendar year or hospitality intended as a gift in kind. All personal gifts within the family and hospitality of a specifically traditional or cultural nature need not be disclosed.

7. BENEFITS (4.3.7 OF CODE)

SOURCE	DESCRIPTION OF BENEFIT

Notes: Any benefits of a material nature must be disclosed. The value of benefits must be disclosed. This may be done in the confidential section of the register.

8. TRAVEL (4.3.8 OF CODE)

SPONSOR	DESCRIPTION OF JOURNEY

Notes: Visits paid for entirely by the Member, business visits unrelated to the Member's role as a public representative or formal visits paid for by the Member's Political Party are excluded from the need for registration. Members are required to disclose travel for Committees where the costs are paid by sources other than Parliament. Where the nature of a visit requires confidentiality, it should be registered in the confidential section.

9. LAND AND PROPERTY (4.3.9 OF CODE)

DESCRIPTION OF PROPERTY	DATE ACQUIRED	AREA	EXTENT OF THE PROPERTY

Notes: Details (i.e. Addresses) in respect of private residences may be entered in the confidential part of the register.

10. PENSIONS (4.3.10 OF THE CODE)

SOURCE	PUBLIC/PRIVATE

Notes: The value must be disclosed. This may be done in the confidential part of the register.

PART B

**REMUNERATED EMPLOYMENT
SANCTION BY POLITICAL PARTY**
Required in terms of Item 4.3.2 of the
Code of Conduct in regard to Financial Interests

If you hold remunerated employment outside of Parliament, this form must be completed and signed by a duly authorised office-bearer of your Political Party.

The following Member _____ (full name)

holds the following remunerated employment outside Parliament:

DATE	EMPLOYER	DETAILS OF EMPLOYMENT

Signed _____

Name of Office Bearer _____

Position _____

Political Party _____

Date _____

**PART C
CONFIDENTIAL SECTION**

MEMBER'S NAME _____

1 SHARES AND OTHER FINANCIAL INTERESTS - MEMBER (4.3.1 OF CODE)

DATE ACQUIRED	NUMBER OF SHARES	NATURE	NOMINAL VALUE	NAME OF COMPANY

Note: Financial interests held in any other corporate body recognised by law other than public or private companies.

**1. SHARES AND OTHER FINANCIAL INTERESTS - IMMEDIATE FAMILY
(4.3.1 OF CODE)**

DATE ACQUIRED	NUMBER OF SHARES	NATURE	NOMINAL VALUE	NAME OF COMPANY

Note: Specify shares and any other financial interests held in any public or private company and in any other corporate body recognised by law.

**2. REMUNERATED EMPLOYMENT OUTSIDE PARLIAMENT - MEMBER ONLY
(4.3.2 OF CODE)**

NAME OF EMPLOYER	EXTENT OF REMUNERATION

Note: The extent of remuneration must be disclosed.

3. DIRECTORSHIPS AND PARTNERSHIPS - MEMBER ONLY (4.3.3 OF CODE)

DIRECTORSHIP/PARTNERSHIP IN ANY CORPORATE BODY	EXTENT OF REMUNERATION

Note: The extent of remuneration must be disclosed.

3a). DIRECTORSHIPS AND PARTNERSHIPS - IMMEDIATE FAMILY (4.3.4 OF CODE)

NAME OF ORGANISATION	TYPE OF BUSINESS ACTIVITY	VALUE OF ANY BENEFITS DERIVED

Note: If remuneration is a consequence of or associated with holding of such office directorship/ partnership must be disclosed.

4. CONSULTANCIES OR RETAINERSHIPS - IMMEDIATE FAMILY (4.3.4 OF CODE)

NAME OF ORGANISATION	TYPE OF BUSINESS ACTIVITY	VALUE OF ANY BENEFITS DERIVED

Note: The value of any benefits derived must be disclosed in the confidential section.

5. SPONSORSHIPS (4.3.5 OF CODE)

Note: No disclosure required in the confidential section.

6. GIFTS AND HOSPITALITY - IMMEDIATE FAMILY (4.3.6 OF CODE)

DESCRIPTION	VALUE	SOURCE

Notes: Specify all gifts with a value and source in excess of R350 or gifts from a single source which cumulatively exceed the value R350 in any calendar year, or hospitality intended as a gift in kind. All personal gifts within the family and hospitality of a specifically traditional or cultural nature need not be disclosed.

7. BENEFITS - MEMBER ONLY (4.3.7 OF CODE)

SOURCE	DESCRIPTION OF BENEFIT	VALUE

Note: The value of any benefit received must be disclosed.

7a). BENEFITS - IMMEDIATE FAMILY (4.3.7 OF CODE)

SOURCE	DESCRIPTION OF BENEFIT	VALUE

Note: The value of any benefit received must be disclosed.

8. TRAVEL - MEMBER ONLY (4.3.8 OF CODE)

SPONSOR	DESCRIPTION OF JOURNEY

Note: Where the nature of a visit requires confidentiality, it should be registered in the confidential section.

9. LAND AND PROPERTY - MEMBER ONLY (4.3.9 OF CODE)

DESCRIPTION OF PROPERTY	AREA	EXTENT OF THE PROPERTY

Note: Details of private residences may be entered in the confidential section of the register.

9a). LAND AND PROPERTY - IMMEDIATE FAMILY (4.3.9 OF CODE)

DESCRIPTION OF PROPERTY	AREA	EXTENT OF THE PROPERTY

Notes: Any interest in immovable property including private residences, vacation homes and other landholdings may be disclosed in the confidential section of the register.

10. PENSIONS - MEMBER ONLY (4.3.10 OF THE CODE)

SOURCE	PUBLIC OR PRIVATE	VALUE

Note: The value of any pension must be disclosed. This may be done in the confidential section of the register.

**Second Annual Report of the Committee on Members' Interests
30 October, 1997**

On 22 October 1996 the Committee reported that the Register for Members' Interests and the Office of the Registrar had been established. The Committee had as its first task in 1997 the publication of the Register.

Publication of the 1997 Register.

Subsequent to the Committee's report to Parliament in 1996, returns were received from all Members of the National Assembly. Because the Senate was abolished in the same period and the National Council of Provinces had come into being, the Register at that stage was confined to the National Assembly.

The public part of the Register was made available to the public on 12 February 1997. Any person wishing to obtain a member's record is required to complete a form with an undertaking not to use the information for commercial or other purposes not intended by the Code and to pay R1,00 per record in administration fees (reduced from an initial amount of R5,00 per record).

Shortly after its establishment, the National Council of Provinces adopted the Code by resolution on 27 February 1997, subject to the proviso that the Code would not apply to special delegates and local government representatives designated in terms of section 67 of the Constitution. Returns have been received from all relevant members of the NCOP.

The full register was published nationally by the media. No complaints have been received.

Publication 1998.

Disclosure forms were distributed to all members on 17 October 1997. The returns are due on 5 November 1997. The disclosure will be made public on 1 April 1998 as required in terms of 3.2.5 of the Code.

Committee on Members' Interests.

The Committee has held seven meetings since the last report. In this period the Committee finalised the procedure for investigation of complaints and has effected a number of revisions in terms of paragraph 6.4 of the Code. A permanent Registrar was appointed and the Office of the Registrar has been established.

The Committee is currently liaising with the provinces with a view to the adoption of Codes in the Provinces. The Committee is also assessing the need for legislation on the Code.

Procedure for the investigation of complaints

The following is the procedure for investigation adopted by the Committee on 14 October 1997.

1. General

- 1.1 This procedure is based on, and is intended to be guided by, the principles of promptness, fairness and consistency.

2. Procedures

- 2.1 Any person or body may submit a complaint to the Office of the Registrar concerning non-compliance with the provisions of the Code by a member. A complaint must be in writing and specify the names of the member, the complainant and the nature of the complaint. It may include relevant evidence. Anonymous complaints will not ordinarily be considered. The Committee may, however, of its own accord investigate the facts arising out of an anonymous complaint where there appears to be prima facie evidence of non-compliance by a member.
- 2.2 The Registrar must within seven days of receiving a complaint inform the member concerned of the substance of the complaint.
- 2.3 The member must respond to the Registrar within seven days of being informed of the complaint.
- 2.4 The Registrar must consider the member's response or, if the member does not respond, the Registrar may begin a preliminary investigation to determine the facts. The member must be notified in writing within three days in this regard. The Registrar may decide to take no further action if he/she regards the complaint as frivolous, vexatious or unfounded. A decision of the Registrar in this regard must be confirmed by the Committee.
- 2.5 If urgency demands, the Registrar in consultation with the Chairperson may call a special meeting of the Committee. The Registrar must table a summary of the preliminary investigation and a proposed procedure for further investigation, including an assessment of the need for a hearing.
- 2.6 The Committee must agree to the procedure for further investigation.
- 2.7 In the event of a hearing being held, the member and the complainant must be given a minimum of 10 days' notice. At this stage any prospective witnesses must be notified.

3. Hearings

- 3.1 Hearings must be held when the facts are in dispute. The Committee may decide to call a hearing if the investigation of the Registrar is inconclusive or if the Registrar is unable to make a recommendation or if the Committee decides that a hearing should be held.
- 3.2 The hearing will be on an inquisitorial basis and witnesses may be called.
- 3.3 In each case the Committee has the discretion regarding the weight to be attached to different forms of evidence and the extent of cross examination of witnesses.
- 3.4 The member must be notified of his/her right to be represented by another member, to call material witnesses and have an interpreter present.

- 3.5 The full Committee may attend the hearing. The Committee may appoint from its members a panel for the hearing provided that every political party is entitled to be present.
- 3.6 The Registrar presents the evidence on behalf of the Committee.
- 3.7 The Registrar may call witnesses.
- 3.8 The proceedings will be recorded.
- 3.9 The proceedings remain confidential until the Committee tables its report.
- 3.10 The Committee will decide in each circumstance on issues related to costs for witnesses and complainants.
- 3.11 The Committee must make a full and considered finding, supported by reasons, on the validity of any complaint at the conclusion of its investigations, which it must make public, together with any sanction imposed, and must, if the hearing was in closed session, also supply an adequate summary of the facts. The findings of the Committee must be reported to the relevant House of Parliament within seven days of a hearing or, if the House is in recess, within seven days of the date on which it resumes business.
- 3.12 In conducting hearings, the Committee may adopt any procedures it deems reasonable just and fair.
4. **Reacting to Media Reports.**
- 4.1 The Registrar on his/her own, subject to the approval of the Chairperson, may initiate a preliminary investigation to assess the validity of allegations made in public.
- 4.2 The member named in the media report must be informed immediately of the allegations and that a preliminary investigation is being conducted.
- 4.3 Should the situation warrant it, the Committee will authorise a full investigation.
- 4.4 If a full investigation is carried out, the procedure that follows is the same procedure as that which is detailed in section 2 above.

Revisions to the code of conduct in regard to financial interests

Alterations already effected to the Code since its inception.

The postponement of the publication date was approved by the resolution of both Houses on 22 October 1996.

On 18 April 1997 the National Assembly and on 23 April 1997 the NCOP adopted the motion that clause 3.2.2.2 be amended by extending from two to six months the intervals required for updating of entries in the Register of Members' Interests in regard to the receipt of gifts or hospitality.

Alterations not requiring adaptation of the Code.

The Committee approved the overhauling of the form. The Committee also reduced the administration fee for the viewing of records from R5,00 to R1,00.

Recommendations: Amendments to the Code.

The Committee on Members' Interests recommends the following amendments to the existing Code.¹

3.1.2 Each Member of the Committee must swear or affirm before the Presiding Officer[s] of the House of Parliament of which he or she is a Member that he or she will comply with the requirements of confidentiality where applicable.

3.2.2.2 update their entries at annual intervals [thereafter with the exception of the receipt of gifts or hospitality, which must be entered by the end of every second month in the calendar year].

5.5 The Committee must report its findings and recommendations as to penalty, if any, within [30 days of lodging of a complaint] the period prescribed in any complaints procedure agreed to by the Committee to the appropriate House of Parliament, which must confirm, vary any such report, preferably by a free vote, or refer the matter back to the Committee for further consideration.

General

The Office of the Registrar is now permanently situated in V111 in the Old Assembly and is strategically situated between the two Chambers of Parliament. The permanent Registrar, Ms Fazela Mahomed, was appointed in July 1997. She is assisted by Ms Fatima Isaacs, a senior secretary.

¹ Words in bold type and in square brackets indicate omissions from the existing Code. Words underlined with a solid line indicate insertions in the existing Code.

TAB O

REPUBLIC OF SOUTH AFRICA

REPORT
OF THE
RULES COMMITTEES OF THE NATIONAL ASSEMBLY
AND
THE SENATE
ON
CODE OF CONDUCT IN
REGARD TO FINANCIAL
INTERESTS

*(Printed by order of the Speaker of the National Assembly and the President
of the Senate)*

C1 of 1996] REPORT

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REPORT

(As presented to the National Assembly and the Senate)

The Rules Committees of the National Assembly and the Senate, having considered the report of the joint Subcommittee on a Code of Conduct for members of Parliament, beg to report as follows:

On 25 October 1994, the Rules Committee of the National Assembly resolved to appoint a Subcommittee "to investigate and make recommendations on a code of conduct for members, including a register of gifts and a register of members' interests". This Subcommittee met on several occasions from early 1995, and then, from August of that year, jointly with a similar Subcommittee set up by the Rules Committee of the Senate. This joint committee, which was chaired by Prof A K Asmal, met on five occasions. It produced a report (dated January 1996) which was presented to and debated at joint meetings of the Rules Committees of the Senate and the National Assembly on 8 and 27 March and 14 and 21 May 1996.

Although the Subcommittee was mandated to focus on matters of "ethics", it was resolved to begin, what will be a complex process, by isolating matters of financial disclosure in the first instance. The Code of Conduct in regard to financial interests, which is attached as an Appendix to this report, is therefore not intended to regulate non-financial conduct of Members, such as personal behaviour.

Furthermore, this Code governs the financial interests of only a limited group: persons who are entitled to be present and participate in the proceedings of Parliament. The desirability of introducing specific codes of conduct for identified groups such as office-bearers (chairpersons of Parliamentary committees, Ministers of government at national and provincial levels, members of provincial legislatures), has been established. In addition, the regulation of donations to political parties and to structures of Parliament (such as Portfolio Committees) is not

covered in the Code which follows. The joint Subcommittee has, however, been mandated to continue with its work in respect of these matters.

It has been stated repeatedly during the proceedings of the Subcommittee and the Rules Committees that the whole exercise of drafting codes of ethics or conduct "should reflect the open style of government and the commitment to the principles of transparency and accountability".

The Code has been drafted in a simple and flexible manner, leaving a degree of discretion to the proposed Committee on Members' Interests to develop appropriate practices within this framework as the need arises.

The Committees recommend that this report and the proposed Code of Conduct be considered and adopted by the Houses.

The Committees recommend accordingly.

F N GINWALA
Chairperson: Rules Committee
National Assembly

H J COETSEE
Chairperson: Rules Committee
Senate

Parliament
21 May 1996

CODE OF CONDUCT IN REGARD TO FINANCIAL INTERESTS
(as adopted by the Joint Meeting of the Rules Committees
on 21 May 1996)

1 INTRODUCTION

- 1.1 In order to achieve a political order in South Africa that is truly open, transparent and accountable, as is envisaged in the Constitution, it is essential that its elected leaders maintain the highest standards of propriety to ensure that their integrity and that of the political institutions in which they serve are beyond question.
- 1.2 In general, no person bound by this Code must place himself or herself in a position which conflicts with his or her responsibilities as a public representative in Parliament nor may he or she take any improper benefit, profit or advantage from the office of Member.
- 1.3 This Code seeks to achieve this purpose in regard to the financial interests of Members of Parliament. It has been drawn up after extensive debate among all parties represented in Parliament, and has been adopted by resolution of the Rules Committees of the Senate and National Assembly, meeting in joint session in Parliament on 21 May, 1996.
- 1.4 No set of rules can bind effectively those who are not willing to observe their spirit, nor can any rule of law foresee all possible eventualities which may arise or be devised by human ingenuity. This Code of Conduct has been formulated in as simple and direct a manner as possible. Its success depends both first and last on the

- integrity and good sense of those to whom it applies. Therefore, where any doubt exists as to scope, application or meaning of any aspect of this Code, the good faith of the member concerned must be the guiding principle.

2 APPLICATION

- 2.1 This Code applies to all persons who are entitled to be present and participate in the proceedings of Parliament.
- 2.2 This Code applies also to any spouse, permanent companion or dependant child of any Member to whom the Code applies, to the extent that the Member is aware of and entitled to disclose any registrable interest held by such a person, provided that disclosure in regard to such persons must appear in the Confidential Part of the Register.
- 2.3 Any person who is publicly acknowledged by a Member as a "companion" must be regarded as a "permanent companion" for the purposes of this Code.

3 REGISTRATION AND PUBLICATION OF MEMBERS' INTERESTS

- 3.1 A Joint Committee, to be known as the Committee on Members' Interests (hereafter "the Committee") must be established and must meet within twenty days of the approval of this Code.
- 3.1.1 The majority party in the National Assembly must have one representative more than the combined total of representatives of all other parties on the Committee.

3.1.2 Each member of the Committee must swear or affirm before the Presiding Officers that he or she will comply with the requirements of confidentiality where applicable.

3.1.3 The Committee must elect a Chairperson and Deputy Chairperson from among its members at its first meeting, who must fulfill the duties associated with their offices in the manner prescribed for Chairpersons of Committees of the National Assembly, but are not entitled to the normal financial benefits of such office.

3.1.4 The Committee is quorate if half its members plus one are present at any meeting, and must meet from time to time, but at least monthly during Parliamentary sessions.

3.1.5 The Committee has the following functions:

3.1.5.1 the overall supervision of the compilation and publication of the Register of Members' Interests (see para 3.2 below);

3.1.5.2 the determination of any complaints in regard to the disclosure of Members' Interests;

3.1.5.3 the recommendation of any sanctions to be imposed on Members for contravention of any aspect of this Code;

3.1.5.4 the interpretation of and the giving of advice in regard to the operation of this Code either generally or upon request by a Member;

3.1.5.5 the reporting on the operation of this Code to Parliament, as the occasion demands but at least annually; and

3.1.5.6 any other functions reasonably required for the effective administration of this Code.

3.1.6 In discharging its functions, the Committee has the power to summon any person to appear or to produce documentary evidence before it and to answer questions put to him or her.

3.1.7 The Committee must be served by a senior official on the staff of Parliament, to be known as the Registrar of Members' Interests (hereafter "the Registrar"), appointed by the Presiding Officers after consultation with all the political parties represented in Parliament.

3.1.7.1 The Registrar, and such support staff as may be approved -

3.1.7.1.1 must make all arrangements in regard to meetings of the Committee, on instruction from the Chairperson;

3.1.7.1.2 must open, compile and keep safe and up to date the Register of Members' Interests and must not divulge any information in the Confidential Part of the Register improperly;

- 3.1.7.1.3 must carry out all other administrative duties in regard to this Code and as required by the Committee from time to time, including the giving of advice to Members as to the operation of the Code; and;
 - 3.1.7.1.4 must at all times display the highest level of integrity and impartiality in the execution of his or her duties.
- 3.2 A register, to be known as the Register of Members' Interests (hereafter "the Register") must be opened within thirty days of the adoption of this Code.
- 3.2.1 All registrable interests, as described in Section 4 of this Code, must be entered in the Register in the manner prescribed by the Committee from time to time.
 - 3.2.2 Without detracting from the discretion of the Committee as to the form of disclosure of registrable interests, all Members must in the prescribed manner -
 - 3.2.2.1 make their initial disclosure in the Register within thirty days of the opening of the Register or their election to Parliament, provided that initial disclosure must reflect registrable interests as at the date of such disclosure, including all gifts and hospitality received from the date of the adoption of this Code by the Joint Meeting of the Rules Committees of Parliament; and

- 3.2.2.2 update their entries at annual intervals thereafter, with the exception of the receipt of gifts or hospitality, which must be entered by the end of every second month in each calendar year.
- 3.2.3 The Register must be in two parts, a Confidential and a Public Part.
 - 3.2.3.1 Registrable interests described as "confidential" in this Code or those deemed "confidential" for good cause by the Committee must be entered in the Confidential Part.
 - 3.2.3.2 All other registrable interests must be entered in the Public Part of the Register.
- 3.2.4 The Confidential Part of the Register must lie open for inspection by any member of the Committee in the office of the Registrar during normal working hours, provided that no information contained in the Confidential Part may be disclosed to anyone other than a member of the Committee, and provided further that, if any member of the Committee is found to have breached such confidentiality, he or she will be liable to a reduction of up to thirty days' salary and will be ineligible to serve on the Committee after that.
- 3.2.5 The Public Part of the Register must lie open in the office of the Registrar for inspection by any person during prescribed hours of each normal working day, provided that the Public Part of the Register must be published for general distribution sixty days after the opening of the Register and on 1 April of each year after that.

3.2.6 The Committee must investigate and implement the means for the widest possible dissemination of the information contained in the Public Part of the Register, including the use of computer and other electronic technology.

4 REGISTRABLE INTERESTS

- 4.1 All financial interests of the type stipulated below must be disclosed by every person bound directly by this Code and included in the Register. Such interests are "registrable interests" in terms of this Code.
- 4.2 In addition, whenever a Member has a direct and specific pecuniary interest in a matter being debated or voted on in any Parliamentary forum or is making representations to a Minister of government, governmental department or parastatal organisation, he or she must declare such an interest and must not participate in any such debate, vote or representation after such declaration.
- 4.3 The following categories of registrable interest must be disclosed separately:
- 4.3.1 Shares and other Financial Interests; the number, nature, nominal value and company in which held of any type of shares in any public or private company, provided that financial interests held in any other corporate body recognised by law must be disclosed in the Confidential Part of the Register;

- 4.3.2 Remunerated employment outside Parliament: the employment for remuneration and the name and type of business activity of the employer of any Member outside Parliament, which must be sanctioned by the political party to which the Member concerned belongs and which must not be incompatible with that Member's function as an elected public representative, provided that the extent of such remuneration must be disclosed in the Confidential Part of the Register;
- 4.3.3 Directorships and Partnerships: the holding of office of director in any corporate body and the membership of any partnership recognised by law and the name and type of business activity of the corporate body or partnership where the receipt of remuneration is a consequence of or associated with holding such office or being such a member, provided that the extent of such remuneration must be disclosed in the Confidential Part of the Register;
- 4.3.4 Consultancies: the holding of a consultancy or retainership of any kind, the name and type of business activity of the organisation concerned, and the value of any benefits derived as a result;
- 4.3.5 Sponsorships: the source, description and extent of the provision of financial sponsorships or assistance directly to a Member from non-party sources;
- 4.3.6 Gifts and Hospitality: the receipt, description, value and source of any gift with a value in excess of R350 or gifts from a single source which cumulatively exceed the value of R350 in any calendar year or hospitality intended as a gift in kind, including such gifts and hospitality from an

external source to a spouse, permanent companion or dependant child of a Member, provided that personal gifts within the family and hospitality of a specifically traditional or cultural nature need not be disclosed;

4.3.7 Benefits: the receipt and source of any other benefit of a material nature, provided that the value of such benefit must be disclosed in the Confidential Part of the Register;

4.3.8 Foreign Travel: the undertaking of all travel abroad (including a brief description of the journey and sponsor), other than personal visits paid for entirely by the Member himself or herself, business visits unrelated to the Member's role as a public representative, or formal visits paid for by the Member's political party, provided that a registrable visit may be entered in the Confidential Part of the Register where its nature so requires;

4.3.9 Land and Property: any interest in immovable property, wherever situated, including private residences, vacation homes and any other landholding, provided that only the description, area in which situated and extent of the property need be disclosed and that such details in respect of private residences only may be entered in the Confidential Part of the register; and

4.3.10 Pensions: the receipt and source of a pension of any description, whether funded privately or publicly, provided that the value must be disclosed in the Confidential Part of the Register.

4.4 Where any doubt or discretion exists in respect of the registrability of a financial interest, the Member concerned must act at all times in good faith.

5 ENFORCEMENT OF THE CODE

- 5.1 The Committee, acting on its own or on a complaint by any person through the office of the Registrar, must investigate with due expedition any alleged irregularity in regard to the disclosure of financial interests of Members registrable in terms of this Code.
- 5.2 The Committee may adopt whatever procedures it deems reasonable in justice and fairness (including a consideration of any expenses incurred) in conducting its investigations, but must hear at least the complainant and the Member in respect of whom the complaint is lodged, which hearing must be in closed session unless the Committee decides otherwise.
- 5.3 The Committee must make a full and considered finding supported by reasons on the validity of any complaint at the conclusion of its investigations, which it must make public, together with any sanction to be imposed, and must, if the hearing was in closed session, also supply an adequate summary of the facts.
- 5.4 The Committee must at the same time recommend the imposition of one or more of the following penalties where it has found that a Member has contravened this Code: a reprimand; a fine; a reduction of salary or allowances; the suspension of privileges or a Member's right to take his or her seat in Parliamentary debates or committees, provided that the amount of any such fine or reduction may not exceed the value of thirty days' salary, nor may such period of suspension exceed fifteen days at a time.

- 5.5 The Committee must report its findings and recommendations as to penalties, if any, within 30 days of the lodging of a complaint, to the appropriate House of Parliament, which must confirm or vary any such report preferably by a free vote, or refer the matter back to the Committee for further consideration.
- 5.6 Once the appropriate House has confirmed the Committee's report, the Speaker or the President of the Senate/Chairperson of the National Council of Provinces must act on such decision with due expedition.

6 MISCELLANEOUS PROVISIONS

- 6.1 Lobbying for remuneration by any Member is prohibited.
- 6.2 A reference to "remuneration" in this Code means the receipt of benefits in cash or in kind.
- 6.3 A provision of this Code may be amended or repealed by resolution of both Houses of Parliament.
 - 6.3.1 In particular, the value at which gifts or hospitality become registrable in terms of rule 4.3.6 may be adjusted to reflect changing monetary values.
- 6.4 The provisions and implementation of this Code must be reviewed by the Committee one year after coming into operation, and at least annually after that.

TAB P

THE UNITED REPUBLIC OF TANZANIA



No. 13 OF 1995

I ASSENT.

A. H. MWINYI,
President

13TH JULY, 1995

An Act to establish a code of ethics for certain public leaders, to provide for the organisation of the Ethics Secretariat and for matters connected with or incidental to them.

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

- 1. This Act may be cited as the Public Leadership Code of Ethics Act, 1995. Short title
- 2. This Act shall come into operation on the first day of July, 1995. Com-
mence-
ment
- 3. This Act shall apply to Tanzania Zanzibar as well as to Mainland Tanzania in respect of public officers holding offices under the Union Government. Applica-
tion
- 4. In this Act, unless the context requires otherwise— Interpre-
tation
 - “Code” means the Code of Ethics for Public Leaders established by or under this Act;
 - “Commissioner” means the Ethics Commissioner appointed under section 20;

“Government” means the Union Government or the Revolutionary Government of Zanzibar;

“public leader” means any person holding any of the following public offices, namely—

- (i) President of the United Republic;
- (ii) Vice-President of the United Republic;
- (iii) President of Zanzibar;
- (iv) Prime Minister;
- (v) Chief Minister of Zanzibar;
- (vi) Speaker and Deputy Speaker;
- (vii) Chief Justice of the United Republic;
- (viii) Minister, Deputy Minister and Regional Commissioner;
- (ix) Attorney-General;
- (x) Judge and Magistrate;
- (xi) Member of Parliament;
- (xii) Ambassador or High Commissioner representing Tanzania abroad;
- “(xiii) Chief Secretary, Principal Secretary, Regional Development Director and District Commissioner;”
- (xiv) Controller and Auditor-General;
- (xv) Clerk of the National Assembly;
- (xvi) Chief of Defence Forces;
- (xvii) Inspector-General of Police;
- (xviii) Chief of National Service;
- (xix) Principal Commissioner of Prisons;
- (xx) Director-General of Intelligence;
- (xxi) Director-General of Prevention of Corruption Bureau;
- (xxii) Mayor, Chairman, Member or chief executive officers of a local government authority;
- (xxiii) Governor, Chairman, Managing Director, General Manager or Director-General of a body corporate in which the Government has a controlling interest;
- (xxiv) Chairman and Members of all commissions appointed on fulltime basis;
- (xxv) public officers in charge of independent Government Departments;

“Tribunal” means the Ethics Tribunal appointed under section 27.

PART II

THE BASIC ELEMENTS OF CODE OF ETHICS

President to work for promotion of integrity in public office, etc.

5.—(1) It shall be the duty of the President, subject to this Act, to work towards the evolution of ethical standards designed to provide a basis for enhancing public confidence in the integrity of public leaders and in the decision-making process in the Government and in the public sector in general.

(2) In discharging the duty imposed on him by this section, the President shall be guided, subject to this Act, by the need to evolve, and to foster, sound rules and ethical standards in the public service by—

- (a) providing that a public leader shall not put himself in a position where his personal interest conflicts with his responsibility as such leader;
- (b) encouraging experienced and competent persons to seek and accept public office, and facilitating interchange between the private and the public sector;
- (c) establishing clear rules of ethics in respect of conflict of interest for, and post-employment practices applicable to elected and appointed public leaders;
- (d) minimizing the possibility of conflicts arising between the private interests and public duties of public leaders and providing for the resolution of such conflicts in the public interest should they arise.

6. The Code of Ethics for public leaders shall seek as far as possible to institute and invoke the following principles in respect of the conduct of public leaders, namely:—

Principles
to be in-
voked by
code

- (a) in relation to ethical standards, that public leaders shall while in office, act with honesty, compassion, sobriety, continence, and temperance, and uphold the highest possible ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of Government are conserved and enhanced;
- (b) in relation to public scrutiny, that public leaders shall have an obligation—
 - (i) to perform their official duties and arrange their private affairs in a manner that would bear the closest public scrutiny, an obligation that is not fully discharged by simply acting lawfully;
 - (ii) in relation to all public leaders whether in elective or appointive offices, there is to be established a procedure for declaration of all property or assets owned by, or liabilities owned to him, his spouse or unmarried minor children, without prejudice to the right of wives and husbands of public leaders to own properly independently of their spouses;
- (c) in relation to decision-making, that public leaders shall, in fulfilling their official duties and responsibilities make decisions in accordance with law, in the public interest and with regard to the merits of each case;

- (d) in relation to private interests, that public leaders shall not have private interests, other than those permitted by the Code that would be affected particularly or significantly by government actions in which they participate;
- (e) in relation to public interest, that on appointment or election to office, and thereafter, public leaders shall so arrange their affairs as will prevent real, potential or apparent conflicts of interest from arising, but if such a conflict does arise between the private interests of a public leader and his official duties and responsibilities, the conflict shall be resolved in favour of the public interest;
- (f) in relation to gifts and benefits, that public leaders, shall not solicit or accept transfers of economic benefit other than incidental gifts, customary hospitality or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public leader;
- (g) in relation to preferential treatment, that public leaders shall not step out of their official roles to assist private entities or persons in their dealing with the government where this would result in preferential treatment to any person;
- (h) in relation to insider information, that public leaders shall not knowingly take advantage of, or benefit from information which is obtained in the course of their official duties and responsibilities and that is not generally available to the public;
- (i) in relation to government property that public leaders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for purposes of according economic benefit to the leader;
- (j) in relation to post- employment, that public leaders shall not act, after they leave public office, in such a manner as to bring the service to ridicule or take improper advantage of their previous office, so that possibilities may be minimized of—
 - (i) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public leaders while in public office;
 - (ii) obtaining preferential treatment or privileged access to government after leaving public office;
 - (iii) taking personal advantage of information obtained in the course of official duties and responsibilities until it becomes generally available to the public; and
 - (iv) using public office to unfair advantages in obtaining opportunities for outside employment.

7.—(1) The President may, from time to time, by Notice published in the *Gazette*, declare requirements and rules regarding ethical standards that are to be complied with by public leaders.

(2) A Notice under this section shall not come into operation until it is approved by resolution of the National Assembly.

Declara-
tion of
standards
as to
ethics

PART III

CODE OF ETHICS APPLICABLE TO ALL PUBLIC LEADERS

8. The provisions of this Part shall constitute part of the Code public leaders for the provisions of the Constitution, a breach of which results in the vacation of the office of the public leader concerned.

Relation-
ship be-
tween this
for Part
and pur-
poses of
the Con-
stitution

9.—(1) Every public leader shall, except where the Constitution or any other written law provides otherwise;

- (a) within three months after the commencement of this Act, or
- (b) within thirty days after taking office;
- (c) at the end of each year, and
- (d) at the end of his term of office.

submit to the Commissioner a written declaration, in prescribed form, of all property or assets owned by, or liabilities owed to, him, his spouse or unmarried minor children, subject to subsection (2).

(2) A public leader shall not be required to declare as his property, and property shall not be deemed to be declarable by a public leader if—

- (a) it is not matrimonial property;
- (b) it is not jointly owned with the public leader's spouse or spouses;
- (c) there is no allegation that a public leader appears to have suddenly and inexplicable come into possession of extraordinary riches in relation to his observable sources of income.

(3) Any property or asset acquired by a public leader after the initial declaration required by paragraph (a) or (b) of subsection (1) and which is not attributable to income, gift, or loan approved in the Code shall be deemed to have been acquired in breach of the Code unless the contrary is proved.

10.—(1) Assets and interests for private use of public leaders and their families, and assets that are not of a commercial character shall not normally be subject to public declaration divestment.

Declara-
tion of as-
sets
liabilities

Non-dec-
larable as-
sets

(2) Non-declarable assets referred to in subsection (1) shall include:—

- (a) residences, recreational, property and farms used or intended for use by public leaders or their families;

- (b) household goods and personal effects;
- (c) works of art, antiques and collectibles;
- (d) "motor vehicles and other personal means of transportation for private use;"
- (e) gains or advantage derived through labour on land owned or occupied by a public leader;
- (f) registered retirement savings plans that are not self-administered, annuities and life insurance policies;
- (g) money saved by a previous employer, client or partnership; and
- (h) person loans receivable from the members of the public leader's immediate family and small personal loans receivable from other persons where the public leader has loaned the money receivable.

Declara-
ble assets

11.—(1) A public leader shall make a declaration of assets that are not non-declarable assets in order for him to be able to deal with them without giving rise to a conflict of interest.

(2) Declarable assets shall included—

- "(a) cash and deposits in a bank or other financial institution;"
- (b) Treasury Bills and other similar investments in securities of fixed value issued or guaranteed by the Government or agencies of the Government;
- (c) interest on money deposited in a bank, building society or other financial institution;
- (d) dividends or other profits from stocks or shares held by a public leader in any company or other body corporate;
- (e) interests in business that do not contract with the Government, and do not own or control publicly traded securities, other than incidentally, and whose stocks and shares are not traded publicly;
- (f) farms under commercial operation;
- (g) real property which is not a non-declarable asset;
- (h) assets that are beneficially owned, which are not non-declarable assets and which are administered at arm's length.

Public
leader not
to acquire
dishon-
estly any
pecuniary
advantage

12. A public leader shall be considered to have breached the Code if he knowingly acquires any significant pecuniary advantage, or assists in the acquisition of any pecuniary advantage by another person, by—

- (a) improperly using or benefiting from information which is obtained in the course of his official duties and which is not generally available to the public;
- (b) disclosing any official information to unauthorised persons;
- (c) exerting any improper influence in the appointment, promotion, disciplining or removal of a public officer;
- (d) directly or indirectly converting Government property for personal or any other unauthorised use; for the purposes of reaping private economic benefit;
- (e) soliciting or accepting transfers of economic benefit, other than—
 - (i) benefits of nominal value, including customary hospitality and traditional or token gifts;

- (ii) gifts from close family members or from public leaders elsewhere; or
- (iii) transfers pursuant to an enforceable property right of the public leader or pursuant to a contract for which full value is given.

13.—(1) A public leader shall not speak in the Cabinet, National Assembly, in a local government council or a committee thereof, or in or at any other official forum or part of it, on any matter in which he has an interest direct pecuniary interest unless he has disclosed the nature of that interest to the Cabinet, the Assembly, the Council, Committee or such other forum or part of it.

Public leader to disclose pecuniary interest to forum

(2) For the purposes of this section the separately owned assest of the spouse or minor children of a public leader shall be deemed to consitute an interest for disclosure by him.

14.—(1) Where a public leader has an interest in a contract that is made, or is proposed to be made, by the Government, and has not made a sufficient declaration under subsection (4) in relation to the contract, the public leader shall as soon as practicable make a declaration of his interest in relation to the contract, specifying the nature and extent of his interest.

Declaration of interest Government contract

(2) Where—

- (a) immediately before the commencement of this Act, a public leader has an interest in a contract that has been made by the Government; and
- (b) the contract is not completely performed by all parties within thirty days after the commencement of this Act, the public leader shall, within thirty days after the commencement of this Act,

declare the interest in accordance with this section.

(3) The interest of the spouse or spouses or of the children of a public leader in relation to the Government contract shall be deemed to be the interest of the public leader.

(4) A declaration for the purposes of this section shall be made to the Commissioner in writing.

(5) A declaration by a public leader that—

- (a) states that he has an interest in a specified body corporate or firm;
- (b) specifies the nature and extent of the interest;
- (c) where the interest is a shareholding or partnership, specifies the proportion of the ownership of the company or firm represented by the sharcholding or partnership; and
- (d) states that he is to be regarded as interested in any contract which may, after the date of the notice, be made with the Government by that body corporate or firm,

shall be a sufficient declaration of interest in relation to any contract so made unless, at the time the question of confirming or entering into any contract is first taken into consideration by the Government, the extent of his interest in the body corporate or firm is greater than is stated in the declaration.

(6) For the purposes of this section, a public leader has an interest in a contract if—

- (a) he will derive any material benefit, whether direct or indirect, from the contract; or
- (b) one party to the contract is a firm or body corporate and he has a material interest, whether direct or indirect, in the firm or body corporate.

(7) For the purposes of paragraph (b) of subsection (6), a public leader shall not be considered to have a material interest in a body corporate by reason only that—

- (a) he holds debentures of the body corporate; or
- (b) he holds shares in the body corporate with a total marketvalue of less than the annual emoluments from office of the public leader.

Failure to make declaration, or making of false declaration under section 9

15. A public leader who is subject to section 9 shall be considered to have breached the Code if—

- (a) he fails, without reasonable cause, to make a declaration required by that section; or
- (b) he knowingly makes a declaration under section 9 that is false or misleading in a material particular.

PART IV

SUPPLEMENTARY PROVISIONS APPLICABLE MINISTERS AND REGIONAL COMMISSIONERS

Relationship between this Part and Constitution

16. The provisions of this Part shall, in so far as they apply to Ministers, Deputy Minister, and Regional Commissioners, constitute part of the and the Code of Ethics for Ministers for the purpose of section 53 and 57 of the Constitution.

Collective responsibility of Ministers

17.—(1) A Minister shall not do anything that is inconsistent with the principle of the collective responsibility of Ministers for the policy of the Government and the conduct of its affairs and, in particular, shall not—

- (a) publicly contradict or disassociate himself from any policy adopted by the Cabinet;

- (b) issue public statements criticising another person holding Ministerial office; or
 - (c) make unauthorized disclosures of Cabinet discussions, decisions or documents.
- (2) A Regional Commissioner shall in the performance of the duties of his office be bound by the provisions of subsection (1).

PART V

ADMINISTRATION AND ENFORCEMENT

18.—(1) This section applies to a public leader who is holding elective office and for the purposes of this section such public officer is referred to as "an officer";

Annual
declaration
of as-
sets,
liabilities
and in-
come

(2) An Officer shall, except where the Constitution provides otherwise—

- (a) within thirty days after his appointment; and
- (b) within thirty days after each anniversary of his appointment to the office concerned,

submit to the President or other statutory authority an annual declaration of assets, liabilities and income in accordance with this section.

(3) An annual declaration shall fairly state—

- (a) the value of the assets (other than personal and household effects) and liabilities of the Officer as at the declaration date; and
- (b) the total income of the Officer, together with his income from each source, for the twelve months preceding the declaration date.

(4) For the purposes of this section—

- (a) an Officer appointed to an office before the commencement of this Act shall be deemed of this Act shall be deemed to have been appointed on the commencement of this Act; and
- (b) where an Officer is elected to another office to which this section applies without ceasing to be an Officer, a reference to his election to an office shall be read as a reference to his first appointment to an office to which this section applies.

(5) In this section "declaration date" means the date of the Officer's election or its anniversary, as the case may be.

19.—(1) The Ethics Secretariat, which is established by section 132 of the Constitution of the United Republic, shall be an extra-ministerial department of Government under the Office of the President.

The
Ethics
Sec-
retariat

(2) The Secretariat shall, subject to the Constitution and to this Act, have the duty to receive—

- (a) declarations which are required to be made by public leaders under the Constitution or any other law;
- (b) allegations and notifications of breach of the Code from members of the public; and
- (c) inquire into any alleged or suspected breach of the Code by all public leaders who are subject to this Act.

(3) The President shall provide for the staffing of the Secretariat, and for the taking by them of the oath of secrecy in respect of matters handled by them.

The
Ethics
Commis-
sioner

20.—(1) There shall be established in the Ethics Secretariat the office of Ethics Commissioner, the holder of which shall be the head and chief executive of the department.

(2) The Commissioner shall be appointed from amongst persons of a high proved or provable integrity, who are holding or have held or are eligible for appointment to hold—

- (a) the office of Principal Secretary;
- (b) the office of Judge of the High Court;
- (c) any other high public office in the Service.

(3) The Commissioner shall be appointed by the President, shall hold office for a period of not less nor more than five years and may be removed from office only for good cause involving dishonesty.

Registra-
tion of de-
clarations
of interest
and of as-
sets regis-
ter

21.—(1) On receiving a declaration or interest under section 14 or a declaration of assets and income under section 9 or 18, the Commissioner shall cause the particulars of the declaration to be entered in a register.

(2) The register shall be kept in such form as the President approves and shall be made available for inspection by members of the public at all reasonable times.

Declara-
tions
deemed to
be statut-
ory decla-
rations

22. A declaration made for the purposes of sections 9, 14 or 18 shall be deemed to be a statutory declaration.

Com-
plaints of
breaches
of Part III

23.—(1) An allegation that a public leader has breached Part III may be made to the Commissioner by any person, in writing giving particulars of the breaches or breaches alleged, signed by the complainant's name and address.

(2) Upon receipt of a complaint or allegation against any public leader in relation to compliance with the code, the Commissioner shall cause thorough preliminary investigation to be carried out by or on behalf of the Secretariat in to the allegation or complaints, and if he is satisfied that the investigation discloses a *prima facie* case for which a public leader may be justly required to give a public explanation of his conduct or property, he shall—

(a) if the allegations or complaints relate to the President, submit them to the President and to the Speaker;

(b) if the allegations or complaints relate to any other public leader, notify the President and the Speaker and proceed as in subsection (4).

(3) Where a public leader considers that a statement made in the press or through the other public media alleges, directly or by implication, that he has breached Part III he may report the particulars of the breach or breaches alleged, in writing, to the Commissioner and request that the matter be referred to a tribunal.

(4) The Commissioner shall notify the President and the Speaker of the allegation and shall, after consultation with the Attorney General and with the Chief Justice, appoint a tribunal in accordance with section 27 to investigate the allegation.

(5) The Tribunal shall, within forty-five days of its appointment report its findings to the Commissioner, who shall submit a copy each to the President, to the Speaker, and to the disciplinary authority of the public leader, as well as well as to the public leader concerned

(6) The Speaker shall, not later than seven days after the first sitting of the National Assembly next after receiving the report cause a copy of the report to be laid before the National Assembly.

(7) The Commissioner shall each year compile a report on the affairs and business of the Secretariat, including cases dealt with by the Tribunal and submit it to the President who shall lay it before the National Assembly.

24.—(1) An allegation that a person holding office of Minister or Regional Commissioner has breached Part IV may be made to the President by any person in writing signed by the complainant and giving the complainant's name and address.

Com-
plaints of
breaches
of Part IV

(2) The President shall give a copy of the allegation to the Minister, or Regional Commissioner concerned, who shall proceed to furnish an explanation of his conduct to the President, but within not more than thirty days.

25.—(1) Subject to the provisions of this Act, the Tribunal may require any person who, in its opinion, is able to give any information relating to any matter relevant to any enquiry being conducted by it to furnish it with any such information and to produce any document, papers or things which may be in the possession or under the control of that person and may, by order under the hand of the chairman or vice-chairman, require any such person to attend before the Committee at a time and place specified in such order and be examined on oath or to produce any such document, paper or thing.

Procuring information and the attendance of witnesses

(2) Where the Tribunal orders any person to be examined on oath, any member may administer such oath.

(3) Any order made under this section shall be served on the person to whom it is directed by a person holding office under the tribunal or a police officer in the manner prescribed for the service of a summons on a witness in civil proceedings before a court of law.

(4) If a person to whom an order under this section is directed does not attend at the time and place mentioned therein, the Committee may, upon being satisfied that the order was duly served or that the person to whom the order is directed wilfully avoids service, issue a warrant under the hand of the chairman or vice-chairman to apprehend such person and to bring him before the Tribunal at a time and place specified in the warrant. Every warrant issued under this section shall be executed by police officer.

(5) Where a person is arrested in pursuance of a warrant issued under this section and is not brought before the Tribunal within twenty-four hours of his arrest or earlier released by order of the Tribunal on his undertaking to attend at a time and place specified by it, he shall forthwith be taken before a resident magistrate and such resident magistrate shall—

- (a) if such person enters into a suitable recognizance of his appearance before the Tribunal, release him from custody; or
- (b) order such person to be detained in custody until such time as he can be brought before the Tribunal.

(6) When any person is required by the Tribunal to attend before it for the purposes of this section, such person shall be entitled to the same fees, allowance and expenses as if he were a witness before a court of law and, for the purposes of this subsection, the chairman or the vice-chairman shall have the powers of a court to fix or disallow the amount of any such fee, allowance or expenses.

(7) For the avoidance of doubts it is hereby declared that this section shall apply whether or not the person concerned is a public officer in respect of whose conduct the Tribunal has jurisdiction to enquire and whether or not such documents, papers or things are in the custody or under the control of any Government Ministry, Division, or Department, or the Party or a parastatal organization.

26. Subject to this Act, every person who gives or is required to give information by, or ordered to attend to give evidence or to produce any document, paper or thing before the Commissioner or the Tribunal shall be entitled in respect of such information, evidence, document, papers or things to the same right and privileges as witnesses have in the High Court.

Rights of
witnesses

27.—(1) A Tribunal for the purposes of this Act shall consist of three persons appointed by the President, one of them being appointed from amongst persons who hold or have held the office of Judge of Appeal or of Judge of the High Court, while the other two upon advice by the Commissioner.

The
Tribunal

(2) Where a Tribunal has been constituted under subsection (3) of section 23 the Commissioner may commission it to investigate further allegations received by him under this section whether against the public leader concerned or another public leader.

(3) The President shall appoint one Member of the Tribunal as Chairman.

(4) If a member of a Tribunal becomes unwilling to act or dies, the President may appoint another member in his place.

(5) A Tribunal shall conduct its inquiry in public, save that it may exclude representatives of the press or any or all other persons if it considers it necessary so to do for the preservation of order, for the due conduct of the inquiry or for any other reason.

(6) A Tribunal may engage the services of such technical advisors or other experts as it considers necessary for the proper conduct of the inquiry.

(7) A Tribunal may request assistance from other investigative organs, including the Police, the Anti-Corruption Bureau, the Permanent Commission of Inquiry and those organs shall be empowered to provide information to the Tribunal and to conduct investigations on behalf of the Ethics Secretariat.

(8) In its report, the Tribunal may make such recommendations as to administrative actions, criminal prosecutions or other further actions to be taken as it thinks fit.

(9) If the Tribunal considers that an allegation was malicious, frivolous or vexatious, or that the particulars accompanying it are insufficient to allow a proper investigation to proceed, it shall say so in its report.

(10) Sections 2, 2A, 10A, 10B, 16A and 16B of the Commissions of Inquiry Ordinance shall apply to a Tribunal as if—

- (a) the Tribunal were a Commission appointed under the Act; and
- (b) a reference to a Commissioner were a reference to a member of the Tribunal.

PART VI

MISCELLANEOUS PROVISIONS

Offence
of false
allegation

28. A person who makes an allegation under section 23 or 24, knowing; it to be false shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding two years.

Payment
of fees, re-
numera-
tion or ex-
penses

29. Any fees, remuneration or expenses payable in respect of a Tribunal or for the purposes of the Secretariat shall be paid out of moneys appropriated by Parliament for that purpose.

This Act
does not
derogate
from
other laws

30. Nothing in this Act shall have the effect of limiting or derogating from the Prevention of Corruption Act, 1971 the penal Code or any other written law, and the conclusion of proceedings under this Act shall not prevent the institution of laws criminal or other proceedings under any other law in respect of the public leader concerned.

This Act
does not
prevent
public
leader
from res-
igning

31. Nothing in this Act shall have the effect of limiting the right of a Minister or any other public leader to resign as Minister or as holder of such other office of public leader.

Regula-
tions

32.—(1) The Minister may make regulations for or with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without restricting the generality of subsection (1), the regulations may:—

- (a) prescribe fees for the inspection of the register referred to in section 21;
- (b) prescribed procedure for summoning witnesses;
- (c) prescribe procedures for use by public leaders to divest themselves of property not permissible under this Act.

Transi-
tional pro-
visions

33. The President may, within twelve months from the commencement of this Act make such transitional temporary and consequential provisions as he deems necessary or desirable for the more effectual application of the provisions of this Act and the Code.

Passed in the National Assembly on the 3rd May, 1995.

G. F. MLAWA,

Clerk of the National Assembly

TAB Q

United Kingdom



MINISTERIAL CODE

A code of conduct and guidance on procedures for Ministers

CABINET OFFICE

JULY 1997

MINISTERIAL CODE

A CODE OF CONDUCT AND GUIDANCE ON PROCEDURES FOR MINISTERS

FOREWORD

BY

THE PRIME MINISTER

In issuing this Code, I should like to reaffirm my strong personal commitment to restoring the bond of trust between the British people and their Government. We are all here to serve and we must all serve honestly and in the interests of those who gave us our positions of trust.

I will expect all Ministers to work within the letter and spirit of the Code. Ministers will find the Code a useful source of guidance and reference as they undertake their official duties in a way that upholds the highest standards of propriety.

I have decided to publish this document because openness is a vital ingredient of good, accountable Government. And we will extend openness further through a Freedom of Information Act.

I believe we should be absolutely clear about how Ministers should account, and be held to account, by Parliament and the public. The first paragraph of the Code sets out these responsibilities clearly, following the terms of the House of Commons Resolution on Ministerial Accountability carried last March.

I commend the Code to all of my Ministerial colleagues.

TONY BLAIR

MINISTERIAL CODE

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ANNEX: MEMBERSHIP OF LLOYD'S

1. MINISTERS OF THE CROWN

1. Ministers of the Crown are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties. In particular, they must observe the following principles of Ministerial conduct:

- i. Ministers must uphold the principle of collective responsibility;
- ii. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their Departments and Next Steps Agencies;
- iii. It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;
- iv. Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the Government's Code of Practice and Access to Government Information (Second Edition, January 1997);
- v. Similarly, Ministers should require civil servants who give evidence before Parliamentary Committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code (January 1996).
- vi. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;
- vii. Ministers should avoid accepting any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;
- viii. Ministers in the House of Commons must keep separate their role as Minister and constituency Member;

ix. Ministers must not use resources for party political purposes. They must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Civil Service Code.

These notes detail the arrangements for the conduct of affairs by Ministers. They are intended to give guidance by listing the principles and the precedents which may apply. They apply to all Members of the Government (the position of Parliamentary Private Secretaries is described separately in Section 4.) The notes should be read against the background of the duty of Ministers to comply with the law, including international law and treaty obligations, and to uphold the administration of justice, the general obligations listed above; and in the context of protecting the integrity of public life. Ministers must also, of course, adhere at all times to the requirements Parliament has itself laid down. For Ministers in the Commons, these are set by the Resolution carried on 19 March 1997 (Official Report, Columns 1946-47): the terms of the Resolution are repeated at ii to v above. For Ministers in the Lords, Official Report Col 1057. It will be for individual Ministers to judge how best to act in order to uphold the highest standards. They are responsible for justifying their conduct to Parliament. And they can only remain in office for so long as they retain the Prime Minister's confidence.

2. MINISTERS AND THE GOVERNMENT

Attendance at meetings of the Privy Council

2. Once a Minister has accepted a Summons to a meeting of the Privy Council this should take precedence over all other engagements. If a Minister is subsequently unable to attend because of illness, or an inescapable public duty, the Clerk of the Council must be informed immediately. If a Minister has a meeting immediately before a Council, the agenda should be arranged to leave ample time to reach the Palace. In no circumstances is it permissible for a Minister not to attend because an earlier meeting has overrun its time. The failure of a Minister to attend a Council after a summons has been accepted is not only discourteous to The Queen but could result in no quorum being present to transact essential Government business.

Cabinet and Ministerial Committee business

3. Cabinet and Ministerial Committee business consists, in the main, of:

- a. Questions which significantly engage the collective responsibility of the Government, because they raise major issues of policy or because they are of critical importance to the public;
- b. Questions on which there is an unresolved argument between Departments.

Matters wholly within the responsibility of a single Minister and which do not significantly engage collective responsibility as defined above need not be brought to the Cabinet or to a Ministerial Committee unless the Minister wishes to have the advice of colleagues. A precise definition of such matters cannot be given; in borderline cases a Minister is advised to seek collective consideration. Questions involving more than one Department should be examined interdepartmentally, before submission to a Ministerial Committee, so that the decisions required may be clearly defined.

Ministerial Committees

4. The Cabinet is supported by Ministerial Committees (both standing and ad hoc) which have a two-fold purpose. First they relieve the pressure on the Cabinet itself by settling as much business as possible at a lower level; or failing that, by clarifying the issues and defining the points of disagreement. Second, they support the principle of collective responsibility by ensuring that, even though an important question may never reach the Cabinet itself, the decision will be fully considered and the final judgement will be sufficiently authoritative to ensure that the Government as a whole can be properly expected to accept responsibility

for it. When there is a difference between Departments, it should not be referred to the Cabinet until other means of resolving it have been exhausted, including personal correspondence or discussions between the Ministers concerned.

5. If the Ministerial Committee system is to function effectively, appeals to the Cabinet must clearly be infrequent. Chairmen of Committees are required to exercise their discretion in advising the Prime Minister whether to allow them. The only automatic right of appeal is if Treasury Ministers are unwilling to accept expenditure as a charge on the reserve; otherwise the Prime Minister will entertain appeals to the Cabinet only after consultation with the Chairman of the Committee concerned. Departmental Ministers should normally attend in person meetings of Committees of which they are members or to which they are invited; unless they make it possible for their colleagues to discuss with them personally issues which they consider to be important, they cannot - except where their absence is due to factors outside their control - expect the Prime Minister to allow an appeal against an adverse decision taken in their absence.

The priority of Cabinet meetings

6. Cabinet meetings take precedence over all other business except meetings of the Privy Council, although it is understood that Ministers may occasionally have to be absent for reasons of Parliamentary business. Requests by Cabinet Ministers for permission to be absent should be made only in the most exceptional circumstances, and should be made at the earliest opportunity and in writing to the Prime Minister. A minute is not necessary when the reason for absence from Cabinet is an overseas visit for which the Prime Minister's approval has already been obtained. As is indicated in paragraph 69(a) below, a copy of the letter seeking the Prime Minister's approval for the overseas visit or absence for any other reason should be sent to the Secretary of the Cabinet. (See paragraph 5 above for attendance at Cabinet Committees.)

7. In order not to disturb the proceedings of the Cabinet and Ministerial Committees, Ministers should see that messages are not sent to them during meetings unless this is absolutely essential. A Minister invited to attend for a particular item will be called into the meeting by the Prime Minister's Private Secretary (or the Secretary of the Committee) as soon as the item for which he or she is required has been reached.

Preparation of business for Cabinet and Ministerial Committees

8. Guidelines on the conduct of Cabinet and Ministerial Committee business is set out in *Cabinet Committee Business* published by the Cabinet Office. In all cases the Secretary should be given at least seven

days' notice of any business likely to require substantive policy discussion (including business to be raised orally) which a Minister wishes to bring before the Cabinet or a Committee. Memoranda should be circulated in sufficient time to enable Ministers to read and digest them, and to be properly briefed. Memoranda for Cabinet and Ministerial Committees should be circulated at least two full working days and a weekend in advance of the meeting at which they are to be discussed. If decisions are urgently required, and an interval including a weekend is not possible, memoranda should be circulated as long before a meeting as possible, and at least two full working days before they are to be discussed. Where a Minister wishes to advise Cabinet of an issue on which no substantive policy discussion is expected, the Private Office should alert the Secretary of the Cabinet in the morning of the day before Cabinet.

9. Ministers' Private Secretaries can help the Secretary by indicating where Ministers other than members of the Cabinet are likely to be concerned with a subject, so that arrangements may be made for their attendance.

10. It is the responsibility of the initiating Department to ensure that proposals have been discussed with other interested Departments and the results of these discussions reflected in the memorandum submitted to Cabinet or a Ministerial Committee. Proposals involving expenditure or affecting general financial policy should be discussed with the Treasury before being submitted to the Cabinet or a Ministerial Committee. The result of the discussion together with an estimate of the cost to the Exchequer (or estimates, including the Treasury's estimate, if the Department and the Treasury disagree) should be included, along with an indication of how the cost would be met (eg by offsetting savings). The estimate of the cost should identify any impact on other Departments. The list of other Departments to be consulted will depend on the proposal but, as a general guide, proposals involving legal implications, especially if there is a risk of successful legal challenge, should be cleared with the Law Officers. The Scottish Office, Northern Ireland Office and Welsh Office must be consulted where proposals have implications for their areas of responsibility. Memoranda should also include a regulatory appraisal where proposals affect business, charities or voluntary organisations; confirmation that the European Law Checklist has been followed if European requirements are being implemented; any significant costs or benefits to the environment; any change in local government responsibilities; consequences for European Union, European Court of Human Rights and other international obligations; and presentational aspects including, where appropriate, a draft statement or

announcement. If, exceptionally, papers are circulated as minutes addressed to the Prime Minister, they are subject to the same requirements.

11. These rules do not limit the right of Ministers to submit to the Cabinet memoranda setting out their views on general issues of policy.

12. Memoranda for the Cabinet and Committees of the Cabinet should be as clear and as brief as possible. They should not normally exceed four pages at most, and the Cabinet Office may not accept an over-long memorandum for circulation. Time spent in making a paper short and clear is saved many times over in reading and in discussion; and it is the duty of Ministers to ensure that this is done and that, where necessary, papers submitted to them are revised accordingly. The model memorandum explains at the outset what the problem is, indicates briefly the relevant considerations, and concludes with a precise statement of the decisions sought. Paragraphs should be numbered for ease of reference. Detailed analysis and argument, together with supplementary detail, should be dealt with, where necessary, in annexes.

**Cabinet Conclusions
and Ministerial
Committee minutes**

13. The record of Cabinet and Committee proceedings is limited to the conclusions reached and such summary of the discussion as is necessary for the guidance of those who have to take action. The Cabinet Office are instructed to avoid, so far as practicable, recording the opinions expressed by particular Ministers. Matters of special secrecy or political sensitivity may be recorded in a limited circulation annex.

14. Any suggestions for amendment of Cabinet Conclusions or Committee minutes must reach the Secretary not later than 24 hours after the circulation of the minutes.

15. Ministers are responsible for instructing their Departments to give effect to the conclusions of the Cabinet or of one of its Committees, and for telling subordinate Departments or branches about decisions affecting them. When immediate action is required by a Department not represented at the meeting, the Secretary will ensure that the Department concerned is notified forthwith. Where urgent action has to be taken by a Department, the Department may ask the Secretary for an advance copy of the relevant conclusions.

Collective responsibility

16. The internal process through which a decision has been made, or the level of Committee by which it was taken, should not be disclosed. Decisions reached by the Cabinet or Ministerial Committees are binding on all members of the Government. They are, however, normally announced and explained as the decision of the Minister concerned. On

occasions it may be desirable to emphasise the importance of a decision by stating specially that it is the decision of Her Majesty's Government. This, however, is the exception rather than the rule.

17. Collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in Cabinet and Ministerial Committees should be maintained. Moreover Cabinet and Committee documents will often contain information which needs to be protected in the public interest. It is therefore essential that, subject to the guidelines on the disclosure of information set out in the Code of Practice on Access to Government Information, Ministers take the necessary steps to ensure that they and their staff preserve the privacy of Cabinet business and protect the security of Government documents.

18. The principle of collective responsibility and the need to safeguard national security, relations with other countries and the confidential nature of discussions between Ministers and their civil servants impose certain obligations on former Ministers who are contemplating the publication of material based upon their recollection of the conduct of Government business in which they took part. They are required to submit their manuscript to the Secretary of the Cabinet and to conform to the principles set out in the Radcliffe Report of 1976 (Cmnd 6386) (see also paragraph 103).

Cabinet documents

19. Ministers relinquishing office without a change of Government should hand over to their successors those Cabinet documents required for current administration and should ensure that all others have been destroyed. Former Ministers may at any time, and subject to undertakings to observe the conventions governing Ministerial memoirs, have access in the Cabinet Office to copies of Cabinet or Ministerial Committee papers issued to them while in office.

20. On a change of Government, the outgoing Prime Minister issues special instructions about the disposal of the Cabinet papers of the outgoing Administration.

21. Some Ministers have thought it wise to make provision in their wills against the improper disposal of any official or Government documents which they might have retained in their possession by oversight.

The Law Officers

22. The Law Officers must be consulted in good time before the Government is committed to critical decisions involving legal considerations. It will normally be appropriate to consult the Law Officers in cases where:

- a. The legal consequences of action by the Government might have important repercussions in the foreign, European Union or domestic field;
- b. A Departmental Legal Adviser is in doubt concerning
 - (i) the legality or constitutional propriety of legislation which Government proposes to introduce; or
 - (ii) the vires of proposed subordinate legislation; or
 - (iii) the legality of proposed administrative action, particularly where that action might be subject to challenge in the courts by means of application for judicial review;
- c. Ministers, or their officials, wish to have the advice of the Law Officers on questions involving legal considerations, which are likely to come before the Cabinet or Cabinet Committee;
- d. There is a particular legal difficulty which may raise political aspects of policy;
- e. Two or more Departments disagree on legal questions and wish to seek the view of the Law Officers.

By convention, written opinions of the Law Officers, unlike other Ministerial papers, are generally made available to succeeding Administrations.

23. When advice from the Law Officers is included in correspondence between Ministers, or in papers for the Cabinet or Ministerial Committees, the conclusions may if necessary be summarised but, if this is done, the complete text of the advice should be attached.

24. The fact and content of opinions or advice given by the Law Officers, including the Scottish Law Officers, either individually or

collectively, must not be disclosed outside Government without their authority.

25. Ministers occasionally become engaged in legal proceedings primarily in their personal capacities but in circumstances which may have implications for them in their official positions. Defamation is an example of an area where proceedings will invariably raise issues for the Minister's official as well as his private position. In all such cases they should consult the Law Officers before consulting their own solicitors, in order to allow the Law Officers to express a view on the handling of the case so far as the public interest is concerned or, if necessary, to take charge of the proceedings from the outset.

26. In criminal proceedings the Law Officers act wholly independently of the Government. In civil proceedings a distinction is to be drawn between proceedings in which the Law Officers are involved in a representative capacity on behalf of the Government, and action undertaken by them on behalf of the general community to enforce the law as an end in itself.

3. MINISTERS AND PARLIAMENT

Parliamentary statements and other Government announcements

27. When Parliament is in session, Ministers will want to bear in mind the desire of Parliament that the most important announcements of Government policy should be made, in the first instance, in Parliament. Even when Government announcements are not of major importance their timing may require careful consideration in order to avoid clashes with other Government publications, statements or announcements or with the planned Parliamentary business. The Leader of the House of Commons, the Chief Whip and the No 10 Press Office should be given as long an opportunity as possible, and wherever possible at least two working days, to comment on the content and timing of all important Government announcements, whether in the form of a Written Answer or oral statement in Parliament, White Paper or press conference. Whenever possible they should also be shown the draft announcement in advance.

28. If too many announcements are made by oral statement at the end of Questions, Parliamentary business could be hindered. Nevertheless, careful consideration should be given in the case of important or particularly sensitive issues to the desirability of making an oral statement rather than an announcement by Written Answer. Ministers proposing to make a statement after Questions (whether or not it is related to a Question on the order paper) or to answer a Question by leave at the end of Questions or to make an important announcement by means of a Written Answer are therefore asked to conform with the following procedure:

- a. As much notice as possible of the intention to make an announcement should be given to (i) the Prime Minister's Private Secretary; (ii) the Private Secretary to the Leader of the House of Commons; (iii) the Private Secretary to the Chief Whip; (iv) the No 10 Press Office. This notification should indicate the broad content of the proposed announcement; if necessary, why an oral statement is thought to be appropriate; and an indication whether the policy with which it is concerned has been approved by Ministers, including references to relevant discussions in Cabinet or Cabinet Committees. If agreement in principle is given, a draft of the statement or answer should be circulated to the same recipients as soon as possible, having been approved in broad terms, though not necessarily in detail, by the Minister in charge of the Department. Draft statements or answers should be

accompanied by background notes which identify the likely points of attack and suggest how these can best be met. Particular attention should be paid to the timing of Written Answers in this context. From Monday to Thursday an Answer to a Written Question may not be released before 3.30 pm (12 noon on Fridays) on the day before which the Question stands on the Order paper for reply. Where earlier release is required the Question may be tabled, by agreement with the Business Managers, one day earlier, the Answer being held back until the following morning;

- b. In the case of announcements by Written Answer, particular care must be taken to avoid making a press announcement before the Written Answer has been delivered to the MP who tabled the Question;
- c. Ministers should not give undertakings, either in or outside the House of Commons, that an oral statement will be made to the House on any subject at a specific time or within a particular period until agreement has been given by the Private Secretaries to the Prime Minister, the Leader of the House of Commons and the Chief Whip, to the proposed timing and by the Ministers concerned to the terms of the statement;
- d. Ministers will be conscious of the pressures of other Parliamentary business when deciding on the timing of statements. For example, on Thursdays a considerable amount of Parliamentary time after Questions is already pre-empted by discussion of the following week's business. It is also desirable, except in special circumstances, to avoid oral statements on Fridays;
- e. Copies of the final version of such announcements should be sent to the Private Secretaries to the Prime Minister, the Leader of the House and the Chief Whip and to the No 10 Press Office as soon as they are available;
- f. A copy of the text of any oral statement to be made at the end of Questions should usually be shown to the Opposition Parties shortly before it is made. For this purpose fifteen extra copies of the final text must reach the office of the Chief Whip in the House of Commons as

early as possible and in any case not later than 2.45 pm (Monday-Thursday) on the day on which the statement is to be made and not later than 10.15 am in the case of statements made on a Friday;

- g. A copy of the final text of an oral statement should in all cases be sent in advance to the Speaker;
- h. The Leader of the House of Lords should be informed of a forthcoming oral statement in the House of Commons and consulted about the desirability of repeating it in the Lords;
- i. A copy of any important Ministerial statement as actually delivered should be placed as quickly as possible in the Library of the House. This affords Members an opportunity of studying it in advance of publication in the Official Report. Depending on the importance of the statement, Departments should also consider making copies available in the Vote Office;
- j. Every effort should be made to avoid leaving significant announcements to the last day before a Recess.

Supply of Parliamentary publications

29. A Minister in charge of an item of business in the House of Commons must ensure that reasonable numbers of copies of any documents published during the last two Sessions which may be needed for the debate are placed in the Vote Office and is responsible for supplying the House of Commons Library in advance with a list of all those older papers which the Minister considers relevant to the item. When any document is out of print the Minister should decide whether or not a reprint is required. Where any doubt exists about the need for any document to be available for a debate the Minister's Private Secretary should consult the Chief Whip's Private Secretary. Similar arrangements should be made with the Lord Privy Seal's office for debates in the House of Lords

Money Resolutions

30. All Money Resolutions are placed on the order paper in the name of the Financial Secretary, Treasury. But he or she is not responsible for seeing a Resolution through the House of Commons. It has always been the practice (as for Civil Estimates) that, although Resolutions appear in the name of the Financial Secretary, the Minister having Departmental responsibility for the relevant Bill is also responsible for the Money Resolution in the House of Commons.

4. MINISTERS AND THEIR DEPARTMENTS

Changes in Ministerial responsibilities

31. The Prime Minister is responsible for the overall organisation of the Executive and the allocation of functions between Ministers in charge of Departments. His approval should therefore be sought where changes are proposed that affect this allocation and the responsibilities for the discharge of Ministerial functions. This applies where the functions in question are derived from statute or from the exercise of the Royal prerogative, or are general administrative responsibilities.

32. The Prime Minister's written approval should be sought where it is proposed to transfer functions:

- a. between Ministers in charge of Departments (unless the changes are de minimis, can be made administratively and do not justify public announcement - but see paragraph 37 below);
- b. within the field of responsibility of one Minister - eg by "hiving off" the discharge of some functions to a Non-Departmental Public Body where the change is likely to be politically sensitive or to raise wider issues of policy or organisation;
- c. between junior Ministers within a Department when a change in Ministerial titles is involved (see also paragraph 38 below).

33. In addition, his written approval should be sought for proposals to allocate new functions to a particular Minister where the function does not fall wholly within the field of responsibilities of one Minister, or where there is disagreement about who should be responsible.

34. The Prime Minister will also determine questions where there is disagreement eg because one Minister has proposed a transfer of functions that is not accepted by the other(s) affected.

35. In giving approval or in determining disputed issues, the Prime Minister may want to take the advice of the Head of the Home Civil Service. The Minister responsible should therefore ensure that the Head of the Home Civil Service is consulted directly by the Permanent Secretary of the Department concerned, or that the officials of the Machinery of Government Group in the Office of Public Service are approached so that they can bring the proposals to his or her attention.

before proposals for a transfer or allocation of functions are submitted to the Prime Minister. The submission to the Prime Minister should be copied to the Head of the Home Civil Service.

36. Responsibility for making a submission to the Prime Minister should normally lie with the ceding Minister in the case of transfers of existing functions, and the principal receiving Minister in the case of allocation of new functions.

37. Unresolved disputed issues concerning the allocation of functions should preferably be referred to the Head of the Home Civil Service before a submission is made to the Prime Minister; and it may be appropriate for him to make the submission on behalf of the Minister concerned. All proposals for a transfer of functions, including those not considered to require the Prime Minister's approval, should be notified to the Machinery of Government Group in the Office of Public Service before they are implemented.

Ministers outside the Cabinet

38. The Minister in charge of a Department is alone answerable to Parliament for the exercise of the powers on which the administration of that Department depends. The Minister's authority may, however, be delegated to a Minister of State, a Parliamentary Secretary or to an official; and it is desirable that Ministers should devolve on their junior Ministers responsibility for a defined range of Departmental work, particularly in connection with Parliament. A Minister's proposal for the assignment of duties to junior Ministers, together with any proposed "courtesy titles" descriptive of their duties should be agreed in writing with the Prime Minister, copied to the Secretary of the Cabinet.

39. Ministers of State and Parliamentary Secretaries will be authorised to supervise the day-to-day administration of a defined range of subjects. This arrangement does not relieve the Permanent Secretary of general responsibilities for the organisation and discipline of the Department or of the duty to advise on matters of policy. The authority of Ministers outside the Cabinet is delegated from the Minister in charge of the Department; the Permanent Secretary is not subject to the directions of junior Ministers. Equally, junior Ministers are not subject to the directions of the Permanent Secretary. Any conflict of view between the two can be resolved only by reference to the Minister in charge of the Department or, if the latter is absent and a decision cannot be postponed, by reference to the Prime Minister or to a Minister whom he has nominated for the purpose.

Arrangements during absence from London

40. The Secretary of the Cabinet should be informed of Ministers' out of town engagements, and also of their weekend and holiday arrangements, so that, if a sudden emergency arises, he can inform the Prime Minister which Ministers are immediately available.

41. When a Minister will be unable to be contacted for a considerable period because of absence or illness a Minister of State will normally take Ministerial charge of the Department. On some occasions, it may be desirable that arrangements should be made for another member of the Cabinet to be available to oversee the Department and to represent the Department's interests in discussions in Cabinet or Cabinet Committees. The Prime Minister's prior approval should be sought for the arrangements for superintending the work of a Department when the Minister in charge will be absent.

42. When one member of the Cabinet is acting in this way on behalf of another, special care must be taken over the exercise of statutory powers. Powers vested formally in "the Secretary of State", as distinct from a specific Secretary of State, can be exercised by any Secretary of State in the absence of another. Otherwise the statutory powers of one Minister cannot formally be exercised in the Minister's absence by a colleague in charge of another Department, and a Minister who is acting for an absent colleague should be careful to avoid appearing formally to exercise powers which are expressed by statute as exercisable by that colleague. The powers of a Board or Council may, however, be exercisable in the absence of its principal member. There may also be statutory authority for formal documents to be signed on behalf of an absent Minister by junior Ministers or officials. Ministers should seek legal advice in cases of doubt.

43. There is no similar difficulty about submissions to Her Majesty. Submissions made in the absence of a Minister can however be made only by a junior Minister who is a Privy Counsellor or by another member of the Cabinet. Submissions on behalf of an absent Secretary of State must be made by another Secretary of State.

Parliamentary Private Secretaries

44. Parliamentary Private Secretaries are not members of the Government, and should be careful to avoid being spoken of as such. They are Private Members, and should therefore be afforded as great a liberty of action as possible; but their close and confidential association with Ministers imposes certain obligations on them. Official information given to them should generally be limited to what is necessary to the discharge of their Parliamentary and political duties. This need not preclude them from being brought into Departmental discussions or

conferences where appropriate, but they should not have access to secret establishments, or information graded secret or above, except on the personal authority of the Prime Minister. While, as Private Members, they need not adhere to the rules on private interests which apply to Ministers, they should, as a general rule, seek to avoid a real or perceived conflict of interest between their role as a Parliamentary Private Secretary and their private interests.

45. Ministers choose and appoint their own Parliamentary Private Secretaries with the written approval of the Prime Minister. The Chief Whip should, however, be consulted about the choice of a Parliamentary Private Secretary; and in view of the special position which Parliamentary Private Secretaries occupy in relation to the Government, the Prime Minister's approval must also be sought before any such appointment is offered and announced.

46. Ministers should ensure that their Parliamentary Private Secretaries are aware of certain principles which should govern the behaviour of Parliamentary Private Secretaries in the House of Commons. Like other Private Members, Parliamentary Private Secretaries are expected to support the Government in all important divisions. However, their special position in relation to the Government imposes an additional obligation which means that no Parliamentary Private Secretary who votes against the Government may retain his or her position. Parliamentary Private Secretaries should not make statements in the House or put Questions on matters affecting the Department with which they are connected. Parliamentary Private Secretaries are not precluded from serving on Select Committees but they should not do so in the case of inquiries into their own Minister's Departments and they should avoid associating themselves with recommendations critical of or embarrassing to the Government. They should also exercise discretion in any speeches or broadcasts which they may make outside the House, taking care not to make statements which appear to be made in an official or semi-official capacity, and bearing in mind at the same time that, however careful they may be to make it clear that they are speaking only as Private Members, they are nevertheless liable to be regarded as speaking with some of the authority which is attached to a member of the Government. Generally they must act with a sense of responsibility and with discretion; and they must not associate themselves with particular groups advocating special policies.

47. Parliamentary Private Secretaries making official visits in the United Kingdom may receive the normal Civil Service travelling and subsistence allowances in respect of absences on official (or

Departmental) business, as would other MPs undertaking work for Government Departments. It is for the Minister concerned to decide whether or not the Parliamentary Private Secretary, when accompanying the Minister, is engaged on Departmental business. It may occasionally be useful for a Parliamentary Private Secretary to accompany the Minister on an official visit abroad but no such arrangements should be made without the prior written approval of the Prime Minister.

Special Advisers

48. The employment of Special Advisers on the one hand adds a political dimension to the advice available to Ministers, and on the other provides Ministers with the direct advice of distinguished "experts" in their professional field, while reinforcing the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support. Cabinet Ministers may each appoint up to two Special Advisers ("political" or "expert"). All appointments require the prior written approval of the Prime Minister, and no commitments to make such appointments should be entered into in the absence of such approval. All such appointments should be made, and all Special Advisers should operate, in accordance with the terms and conditions of the Model Contract promulgated by the Prime Minister on 19 May 1997.

Unpaid advisers

49. The appointment of an unpaid adviser is a personal appointment by the Minister concerned and there is no contractual relationship between such an adviser and the Department. Such appointments carry no remuneration or reimbursement from public funds. In making an appointment Ministers must ensure that there is no conflict of interest between the matters on which the unpaid adviser will be advising and their private concerns. The normal rules of confidentiality also apply. The prior written approval of the Prime Minister should be sought for all such appointments before commitments are entered into.

Royal Commissions, Committees of Inquiry

50. The Prime Minister should be consulted in good time about any proposal to set up:

- a. Royal Commissions: these can only be set up with the sanction of the Cabinet and after The Queen's approval has been sought by the Prime Minister;
- b. Independent Committees of inquiry into any aspect of public policy.

Submissions proposing either of the above should contain details of the proposed size and structure of the body. This requirement is separate from the provisions concerning appointments set out in paragraph 51 below. The Lord Chancellor should also be consulted where there is a proposal to appoint a judge or legal officer (eg a Law Commissioner) to any of the above inquiries. Indeed it may be preferable for the individuals concerned to be approached by the Lord Chancellor, rather than Departments.

Appointments by Ministers

51. The Prime Minister should also be consulted in good time about the appointment or re-appointment of:

- a. The Chairman and other Members of Royal Commissions;
- b. The Chairman of
 - i. Public Corporations
 - ii. Nationalised Industry Boards
 - iii. The most important Non-Departmental Public Bodies (both Executive and Advisory)
 - iv. The more important Departmental committees, including those at 50(ii);
- c. Heads of Non-Ministerial Departments.

In all such cases the Prime Minister will need to be informed about the particular requirements of the post, the attributes essential for a candidate and the extent to which proposed candidates meet such requirements.

- d. Cases where the appointment is likely to have political significance. Ministers should take a wide view of what constitutes political significance. Even local or regional appointments may from time to time excite an unusual amount of public interest because of the circumstances surrounding the appointment or the background of the candidate. In all cases involving political considerations submissions to the Prime Minister by an appointing Minister should be copied to the Chief Whip. The Chief Whip should invariably be consulted before a Member of the House of Commons is approached about appointment

to an office which would result in the vacation of a Parliamentary seat.

A current list of individual public appointments on which the Prime Minister would expect to be consulted is held by the Public Appointments Unit (PAU) in the Office of Public Service. Departments may also choose to consult the Prime Minister in other cases, depending on circumstances.

52. In all cases falling within paragraphs 50 and 51 on which a submission is to be put to the Prime Minister, Ministers should arrange for their Department to consult the PAU beforehand; and the submission to the Prime Minister should be cleared with the Head of the Home Civil Service in advance and should indicate that the PAU has been consulted and that any salary proposals have been agreed with the Treasury if necessary. No commitment should be made to any individual before the Prime Minister has been consulted. In the case of Royal Commissions, the Private Secretary to the Prime Minister as well as the Lord Chancellor (see paragraph 50) should be consulted before any informal soundings are undertaken. In other cases, any informal soundings should be made in such a way as to preserve freedom of action and avoid any appearance of commitment.

53. Where there is doubt about the need for consultation with the Prime Minister, the PAU should be consulted.

54. Subject to the above paragraphs and to the constitution of the body to which the appointment is made, public (non-Civil Service) appointments are the responsibility of the Minister concerned, who should appoint the person(s) he or she considers to be best qualified for the position. In doing so, the Minister should have regard to public accountability, the requirements of the law and (especially in the case of appointments to executive Non-Departmental Public Bodies or National Health Service (NHS) bodies to the Code of Practice for Public Appointments procedures set out by the Commissioner for Public Appointments. The process by which such appointments are made should conform to the principles in the Code - Ministerial responsibility, merit, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality; and to the procedures in the Commissioner's *Guidance on Appointments to Executive Non-Departmental Public Bodies and NHS Bodies*.

55. In considering candidates for public appointments, Ministers should pay particular attention to securing, on merit, proper

representation of women and members of ethnic minorities on public bodies. A Minister in each Department should be responsible for setting objectives to achieve this. All Ministers are asked to ensure, when shortlists of proposed candidates are submitted to them, that if no women candidates are proposed an explanation for this is given. Where the work of a body or committee will have a particular impact on ethnic minority communities or the disabled, the same procedure may be appropriate for ethnic minority or disability representation respectively.

5. MINISTERS AND CIVIL SERVANTS

56. Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions; a duty to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code; a duty to ensure that influence over appointments is not abused for partisan purposes; and a duty to observe the obligations of a good employer with regard to terms and conditions of those who serve them. Civil servants should not be asked to engage in activities likely to call in question their political impartiality, or to give rise to the criticism that people paid from public funds are being used for Party political purposes.

The role of the Accounting Officer

57. Heads of Departments and the chief executives of executive agencies are appointed as Accounting Officers. The essence of the role is a personal responsibility for the propriety and regularity of the public finances for which he or she is responsible; for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient and effective use of resources. Accounting Officers answer personally to the Committee of Public Accounts on these matters, within the framework of Ministerial accountability to Parliament for the policies, actions and conduct of their Departments.

58. Accounting Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness and value for money. If a Minister in charge of a Department is contemplating a course of action which would involve a transaction which the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer will set out in writing his or her objection to the proposal, the reasons for the objection and the duty to inform the Comptroller and Auditor General should the advice be overruled. If the Minister decides nonetheless to proceed, the Accounting Officer will seek a written instruction to take the action in question and send the relevant papers to the Comptroller and Auditor General. A similar procedure applies where the Accounting Officer has concerns as regards the value for money of a proposed course of action. The procedure enables the Committee of Public Accounts to see that the Accounting Officer does not bear personal responsibility for the actions concerned.

**Civil servants and
Party Conferences**

59. The role of Accounting Officers is described in detail in the Treasury memorandum, *The Responsibilities of an Accounting Officer*. There is also a Treasury handbook, *Regularity and Propriety*.

60. Ministers should not ask civil servants to attend, still less take part in, Party Conferences or meetings of policy or subject groups of any of the Parliamentary parties. It is an established principle in the public service that civil servants in their official capacity should not accept invitations to conferences convened by, or under the aegis of, party political organisations. The situation is, of course, different when Ministers require officials to be in attendance at party political events in order to enable the Minister to carry out urgent Departmental business.

61. If a Minister wishes to have a brief for a party political occasion to explain Departmental policies or actions, there is no reason why this should not be provided.

6. MINISTERS' CONSTITUENCY AND PARTY INTERESTS

62. It is wrong in principle for Ministers to use for party or constituency work facilities provided at Government expense to enable them to carry out their official duties. This point of principle is reflected in the entitlement of Ministers to a Parliamentary salary in recognition of the time spent in attending to the interests of their constituents, and to the reimbursement of their secretarial expenses and the expenses of living away from home when attending to constituency business, within the limits prescribed by the relevant Resolutions of the House of Commons. Ministers should thus have their constituency work done at their own expense, as they would if they were private Members of Parliament.

63. Government property should not generally be used for constituency work or party activities. A particular exception is recognised in the case of Nos. 10 and 11 Downing Street, Carlton House Terrace and other official residences where senior Ministers are required to live for the purposes of the job. Where Ministers host Party events in these residences or other Government property, it should be at their own or Party expense with no cost falling to the public purse.

64. Where Ministers have to take decisions within their Departments which might have an impact on their own constituencies, they should, of course, take particular care to avoid any possible conflict of interest.

Parliamentary Commissioner for Administration cases

65. Ministers in the Commons who are asked by members of the public to submit cases to the Parliamentary Commissioner for Administration (PCA) should, where possible, act no differently from other MPs. Ministers should accordingly consider requests on their merits in deciding whether to refer complaints to the PCA, to take them up with the Minister of the Department concerned, to refer the case to another MP (where the complaint is not from a constituent of the Minister) or to decline to take action. Any Minister who has in mind the reference of a case to the PCA would naturally wish to inform in advance the Minister of the Department concerned.

66. Where a complaint from a constituent is against the Minister's own Department the Minister will generally wish to investigate it personally unless he or she, or one of the other Ministers in the Department, has already been directly involved in the case. Where a Minister has been so involved, the PCA should be asked to investigate

Deputations

if the case is within his jurisdiction; and there may be other circumstances in which a Minister will prefer to refer a case to the PCA straight away.

67. Ministers are free to make their views about constituency matters known to the responsible Minister by correspondence, leading deputations or by personal interview provided they make clear that they are acting as their constituents' representative and not as a Minister. Particular problems arise over views expressed on planning applications and certain other cases involving exercise of discretion by Ministers (eg on school or hospital closures, highway or power station inquiries) in which representations intended to be taken into account in reaching a decision may have to be made available to other parties and thus may well receive publicity. Ministers are advised to take particular care in such cases to represent the views of their constituents rather than express a view themselves; but when they find it unavoidable to express a view they should ensure that their comments are made available to the other parties, avoid criticism of Government policies, confine themselves to comments which could reasonably be made by those who are not Ministers, and make clear that the views they are putting forward are ones expressed in their capacity as constituency MPs. Once a decision has been announced, it should be accepted without question or criticism. It is important, in expressing such views, that Ministers do so in a way that does not create difficulty for Ministers who have to take the decision and that they bear in mind the Government's collective responsibility for the outcome. Ministers should also take account of any potential implications which their comments could have on their own Departmental responsibilities.

7. MINISTERS' VISITS

Ministers' visits overseas

68. Overseas visits should not normally be made while Parliament is in session. Ministers should arrange such visits only in the Recess or, where appropriate, at weekends, except where the visit is in connection with the business of the European Union or there are other compelling reasons of Government business. In particular, overseas visits which are largely of a fact-finding kind should be reserved exclusively for the Parliamentary Recess. Moreover, in planning overseas visits Ministers should take account of paragraph 6 above, ie that Cabinet meetings take precedence over all other business (other than meetings of the Privy Council). Sufficient Ministers must also be available during Recesses to ensure effective conduct of Government business, and it may be necessary for this reason to restrict or reconsider absences abroad.

69. Any member of the Cabinet who wishes to be absent from the United Kingdom for any reason, except for visits to European Union countries on official business, or visits to member countries for NATO business should:

- a. seek the Prime Minister's written approval. This must be done before any commitment, even of an informal nature, is made. The reasons for the visit and a list of the countries to be visited should be given; where it is considered to be clearly in the public interest that a Minister be accompanied by his or her spouse at public expense the Prime Minister's permission should be sought. Copies of the letter should be sent to the Foreign and Commonwealth Secretary and to the Chief Whip: their views will be taken into account by the Prime Minister before reaching a decision. A copy should also be sent to the Secretary of the Cabinet;
- b. after the Prime Minister's approval has been obtained the Minister should, for all visits abroad other than visits to European Union or NATO or WEU countries on official business, seek The Queen's permission to leave the country. At the same time Her Majesty should be informed of the arrangements made for the administration of the Minister's Department during his or her absence.

70. Other Ministers who propose to leave the United Kingdom whether on duty or on holiday must seek the approval of the Ministerial

head of the Department concerned, the Foreign and Commonwealth Secretary and the Chief Whip. They need not obtain the Prime Minister's or The Queen's permission but the Prime Minister's written approval must be sought for official visits overseas by Ministers' spouses, special advisers and by Parliamentary Private Secretaries (paragraphs 47, 83 and 84).

71. Ministers' Private Secretaries should not themselves approach diplomatic posts direct nor should they make tentative preparations for overseas visits (other than those to EU countries on official business) before telling the Foreign and Commonwealth Office: arrangements for official Ministerial visits should invariably be put in the hands of the diplomatic post concerned.

72. Ministers should make it their personal responsibility to approve the size and composition of any Ministerial delegation for which their Department is responsible. (Where a delegation includes a Foreign and Commonwealth Office Minister the concurrence of the Foreign and Commonwealth Secretary in the size and composition of the delegation should also be obtained.) Each Minister in charge of a Department should ensure that the Department draws up and maintains a comprehensive and central record of travel by Ministers in the Department. This record should contain details of the numbers and costs of all Ministerial delegations whose travel has been at public expense, including visits to EU countries for the purpose of attending meetings of EU Councils. The record should be maintained in such a way that an up-to-date list of visits and costs of such visits can be made available by Departments at short notice in the event of Departmental Ministers being asked to account for travel undertaken by Ministers in their Departments. Ministers should give a lead in keeping down the size of parties of visitors, by keeping their own parties as small as possible.

Relations with other governments

73. Ministers should remember the importance of sending to the Foreign and Commonwealth Secretary a note of the salient points of any discussions which they may have with representatives of foreign or Commonwealth countries. This applies to informal discussions as well as those held in the course of official business.

Visits by Commonwealth or foreign Ministers

74. Ministers should inform the Foreign and Commonwealth Secretary before extending invitations to Ministers in other governments to pay official visits to this country; and in any case of doubt or difficulty, they should consult him. Departments should also inform the Foreign and Commonwealth Office about all visits which

become known to them, whether private or official, by Ministers in other governments or by any other person of equivalent status potentially at risk, so that the security implications can be considered at the earliest possible stage.

75. Ministers should not overlook the possible foreign policy implications of such day-to-day matters as offering hospitality to prominent political figures visiting this country, accepting social commitments of a similar kind, giving public support for petitions, open letters, etc. Such actions may be construed as significant by foreign observers of the United Kingdom. In any case of doubt Ministers should consult the Foreign and Commonwealth Secretary before making commitments. In addition the Foreign and Commonwealth Secretary should be consulted whenever a Minister intends to make a speech touching on matters affecting foreign and Commonwealth affairs.

Entertainment overseas

76. If it is thought that a Minister may need to provide entertainment while overseas, the advice of the Foreign and Commonwealth Office should be sought both on the desirability and on the form of such entertainment.

Ministers recalled from abroad

77. If a Minister is abroad with permission and is called home for Ministerial or Parliamentary reasons - including to vote - the cost of the extra journey back and forth may be met by public funds.

Ministers' visits in the United Kingdom

78. Ministers who are planning official visits to Scotland, Wales and Northern Ireland should inform the Secretary of State concerned and the Chief Whip. It is also customary to inform the Home Secretary of prospective visits to the Channel Islands and the Isle of Man. In addition Ministers wishing to visit a Government establishment not sponsored by the Department in which they are a Minister (eg the barracks of a unit of the Armed Forces) should advise the sponsor Department in advance.

79. It is the custom for a Minister when preparing to make a visit within the United Kingdom to inform the Members for the constituencies to be included within his itinerary. Special care should be taken not to overlook this courtesy. Ministers cannot, of course, invite Members to accompany them to functions organised by a third party, but adequate notice to the relevant constituency MP will enable them to ensure that they have an opportunity to request invitations from local organisers to functions of an official nature, should they wish to attend. It will also enable them to make suggestions to the

Minister about the inclusion in the itinerary of places which it would be helpful to visit.

Expenses on travel and hospitality

80. In using official cars and travelling by rail or air, Ministers must always make efficient and cost-effective travel arrangements. When Ministers travel on official business, their travel expenses should normally be borne by the Departmental Vote. When any expenses are not met in this way, Ministers will wish to ensure that no undue obligation is involved.

81. Accepting offers of free travel can be misinterpreted. However, an offer to a Minister on official business to accompany a representative of a host foreign government may be acceptable, provided it creates no undue obligation, and if it offers a saving of official time or provides an opportunity to conduct official business. Offers of transport from other organisations should not normally be accepted, except where provided as an integral part of a tour of inspection. In exceptional cases such an offer may be accepted if this would represent a saving of official time and there is no risk of an undue obligation being created. In these cases, if the journey is of any significant distance, the organisation concerned should be reimbursed from the public purse to the value of a scheduled business class ticket. In any cases of doubt, the Prime Minister should be consulted.

Air Miles

82. Air Miles and other benefits earned through travel paid for from public funds, other than where they are de minimis (for example, access to special departure lounges or booking arrangements which go with membership of regular flier clubs), should be used only for official purposes or else foregone. However, if it is impracticable to use the benefits for Government travel, there is no objection to Ministers donating them to charity if this is permissible under the terms of the airline's scheme and the charity is one chosen by the airline.

Travelling expenses of spouses

83. The expense of a Minister's spouse when accompanying the Minister on the latter's official duties may occasionally be paid from public funds, provided that it is clearly in the public interest that he or she should accompany the Minister. In the case of official visits overseas, the Prime Minister's prior assent should be obtained on each occasion (see paragraph 70). For official visits within the United Kingdom, this is at the discretion of the Minister in charge of the Department concerned who should consult the Permanent Secretary. The Prime Minister's prior written approval is however required for any arrangement whereby a Minister's spouse may regularly travel at public expense within the United Kingdom; Ministers should arrange

for the Treasury to be consulted about such arrangements before submitting them to the Prime Minister.

**Travelling expenses of
Special Advisers**

84. If necessary, a Minister may take a Special Adviser on an overseas visit at the public expense, but when an unpaid adviser whose salary is not met from public funds accompanies a Minister on Government business, any additional expenditure which may be incurred should not normally fall on public funds. The written approval of the Prime Minister should be obtained before a Special Adviser or an unpaid adviser accompanies a Minister overseas.

**Offers of hospitality,
gifts, etc.**

85. Detailed rules on the acceptance of gifts, services and hospitality can be found at paragraphs 126-128. While these paragraphs make clear that no Minister or member of their family should accept a gift from anyone which would, or might appear to, place him or her under an obligation (see paragraph 126), there may be difficulty in refusing a gift from another government (or governmental organisation) without the risk of apparent discourtesy. On the other hand the acceptance of a gift or the knowledge that one will be offered may in some countries and in some circumstances entail the offer of a gift in exchange. As a general rule Ministers should not offer gifts or initiate an exchange. In deciding whether to accept gifts from or offer gifts to members of other governments (or governmental organisations) Ministers should wherever possible consult their Permanent Secretaries who will be able to advise them of the rules applicable in such circumstances.

Foreign decorations

86. It is a well-established convention that Ministers should not, while holding office, accept decorations from foreign countries.

8. MINISTERS AND THE PRESENTATION OF POLICY

87. Official facilities financed out of public funds can be used for Government publicity and advertising, but may not be used for the dissemination of material which is essentially party political. The conventions governing the work of the Government Information Service are set out in a guidance note issued simultaneously with the Code and placed in the Library of the House.

Co-ordination of Government Policy

88. In order to ensure the effective presentation of government policy, all major interviews and media appearances, both print and broadcast, should be agreed with the No 10 Press Office before any commitments are entered into. The policy content of all major speeches, press releases and new policy initiatives should be cleared in good time with the No 10 Private Office; the timing and form of announcements should be cleared with the No 10 Press Office. Each Department should keep a record of media contacts by both Ministers and officials.

Press conferences

89. In order to explain policies or to announce new policies a Minister may decide to hold a press conference. This will be convened by the Chief Information Officer of the Department. All press conferences are on the record and open to any representative of the home and overseas media. It is often the practice of Ministers to give separate radio and TV interviews afterwards in order to secure the most effective presentation of their views or announcement. Where a Minister wishes to seek an invitation to address the Lobby the No 10 Press Office should be consulted both about the desirability of such a briefing and the method of organising it. This paragraph applies to the overseas as well as to the home media.

Publication of White and Green Papers

90. Before publishing a White or Green Paper, Departments should consider whether it raises issues which require full collective Ministerial consideration, and, after consulting the Cabinet Office as necessary, seek clearance through the appropriate Cabinet Committee. Any Command Paper containing a major statement of Government policy should be circulated to the Cabinet before publication. This is usually done at the Confidential Final Revise (CFR) stage and should be done under cover of a letter from the Minister's Private Secretary. This rule applies to Papers containing major statements even when no issue requiring collective consideration is required.

91. Except where such Papers are of a routine character or of minor importance, the timing of their publication is governed by similar

considerations to those applying to announcements made in Parliament. Ministers are therefore asked to apply to White Papers the procedure laid down in paragraph 28(a) above. From time to time, White Papers are laid before Parliament in the name of the Prime Minister. In all such cases, the lead Department on the policy issues concerned takes responsibility for the processing and distribution of the White Paper. This should be handled in close consultation with the Parliamentary Clerk at No 10.

92. Care should be taken to avoid infringing Parliamentary privilege when publicity is being arranged for White Papers and similar documents. A procedure is available whereby Confidential Final Revise proof copies (CFRs) of White Papers can be made available under embargo to the Lobby and Upper Gallery, and with discretion to members of other organised groups of correspondents, a short time before copies are laid in the Vote Office (ie before publication). In some cases (for instance, where commercially sensitive information is involved, or where the disadvantages of any breach of an embargo are thought to outweigh the benefits of making advance copies available to the media) no copies should be made available to the media before publication. Where it is considered that the balance of advantage favours the issue of advance copies to the media under embargo, so as to enable their representatives to digest the contents of a White Paper before general publication, the interval between issue of CFRs under embargo and publication should not normally exceed a few hours: for instance, where a White Paper is to be published in the afternoon, CFRs should be issued under embargo during the morning of the same day. Only in special circumstances - for instance, if a White Paper is particularly long or technical - should CFRs be issued under embargo overnight. Any proposal to issue CFRs under an embargo of longer than 24 hours must be cleared with the Chief Press Secretary at No 10. CFRs may be given only to representatives of the media and then only under strict embargo. Any breach of an embargo is a serious matter and should be reported immediately by the Chief Information Officer of the Department to the Minister in charge of the Department and to No 10.

Speeches

93. Ministers cannot speak on public affairs for themselves alone. In all cases other than those described in paragraph 67 they speak as Ministers; and the principle of collective responsibility applies. They should ensure that their statements are consistent with collective Government policy and should not anticipate decisions not yet made public. Ministers should exercise special care in referring to subjects which are the responsibility of other Ministers. Any Minister who

intends to make a speech which deals with, or makes observations which bear upon, matters which fall within another Minister's responsibilities should consult that Minister.

94. The Prime Minister should always be consulted before any mention is made of matters which either affect the conduct of the Government as a whole or are of a constitutional character. The Foreign and Commonwealth Secretary should always be consulted before any mention is made of matters affecting foreign and Commonwealth affairs, relations with foreign and Commonwealth countries and the political aspects of the affairs of dependent territories. Ministers wishing to refer in a speech or any other public statement to economic policy or to proposals involving additional public expenditure or revenue costs should in all cases consult the Chancellor of the Exchequer or the Chief Secretary. Ministers wishing to refer to defence policy should in all cases first consult the Secretary of State for Defence. Ministers wishing to discuss or refer to Northern Ireland should in all cases first consult the Secretary of State for Northern Ireland.

95. Ministers should use official machinery for distributing texts of Ministerial speeches only when such speeches are made on official occasions and deal with Government as distinct from Party policy. Speeches made in a party political context should be distributed through the Party machinery.

96. Ministers should not accept payment for speeches of an official nature or which directly draw on their responsibilities or experience as Ministers, either on their own or their Department's account, or with a view to donating the fee to charity.

Broadcasts

97. The provisions of paragraphs 87-89 apply to Ministerial broadcasts as well.

98. Radio and television broadcasts by ministers are of four types: party political; Budget; special broadcasts by Ministers; and interviews with Ministers for news and feature programmes:

- a. Party political broadcasts on radio and television within the Government's quota are arranged through the Chief Whip acting on behalf of the Prime Minister;
- b. Budget broadcasts (by the Chancellor of the Exchequer and a member of the main Opposition Parties in reply)

constitute a special series of party political broadcasts. These are arranged through Parliamentary channels and agreed by the Chancellor of the Exchequer;

- c. The broadcasting authorities may provide opportunities within the regular framework of their programmes for Ministers to give factual explanations of legislation or policies approved by Parliament, or to seek the co-operation of the public on matters where there is a general consensus of opinion. The Opposition have no automatic right of reply. The British Broadcasting Corporation (BBC) may also provide the Prime Minister or a senior Cabinet Minister designated by him with an opportunity to broadcast to the nation to explain events of prime national or international importance or to seek public co-operation over such events. These are traditionally known as "Ministerial" broadcasts. The Opposition have the right to make an equivalent broadcast in reply. In this event the BBC will arrange as soon as possible for a broadcast discussion of the issues involved. A member of the Cabinet, a senior member of the opposition, and, if they so desire, representatives of third parties with appreciable electoral support would be invited to participate. The Independent Television Commission (ITC) is not obliged to relay either type of special broadcast, but if they transmit a "Ministerial" broadcast they must also take any Opposition reply and arrange a third stage, the discussion programme. Proposals for a special broadcast of either type should be referred as soon as possible to the Chief Press Secretary at No 10. The Leader of the House of Commons and the Chief Whip should also be consulted. No approach should be made to the BBC or to the ITC for a broadcast of either type without the approval of the Prime Minister.

99. Ministers invited to broadcast on radio and television in a private and not a Ministerial capacity will wish to consider if such a broadcast would have a bearing on another Department's responsibility in which case they should clear the matter with the colleague concerned before agreeing to the invitation. Ministers invited to take part in programmes to be broadcast outside the United Kingdom should consult the Foreign and Commonwealth Secretary and any other Minister who may be concerned with the subject of the broadcast. Ministers invited

to broadcast while on a visit to another country should seek the advice of Her Majesty's Representative in that country. Ministers will wish to use their discretion as to whether the nature of any such invitation at home or abroad is such that they should consult the Prime Minister before agreeing to broadcast.

100. Ministers should not accept payment for official broadcasts on radio or television, either on their own or on their Department's account or with a view to donating the fee to charity.

Press articles

101. Ministers may contribute occasionally to a book, journal or newspaper (including a local newspaper in their constituency) for the purpose of supplementing other means of informing the public about the work of their Department provided that publication will not be at variance with their obligations to Parliament and their duty to observe the principle of collective Ministerial responsibility. Any Minister wishing to practice regular journalism, including the contribution of weekly or fortnightly articles to local newspapers in their constituencies, must have the prior approval of the Prime Minister. In cases of doubt, and in all cases where a Minister is contemplating the contribution of an article going beyond the strict confines of his or her Departmental responsibility, the Prime Minister should be consulted, before work has begun and in any case before any commitment to publish is entered into. In all cases where an article contains material which falls within the Departmental responsibility of another Minister, that Minister must be consulted. Ministers should not accept payment for writings, either on their own or on their Department's account, or with a view to donating the fee to charity.

102. Ministers are advised not to engage in controversy in the correspondence columns of either the home or the overseas press. Ministers may however see advantage in correcting serious errors or misstatements of fact which lead to false conclusions. Such letters should be brief and confined to the exposition of facts.

Books

103. Ministers may not, while in office, write and publish a book on their Ministerial experience. Former Ministers are required to submit their manuscript to the Secretary of the Cabinet and to conform to the principles set out in the Radcliffe Report of 1976 (Cmnd 6386) (see paragraph 19 above). Ministers may not receive payment for a book written before becoming a Minister if the decision to publish was taken afterwards.

Party and other publications

104. The rule in paragraph 101 does not debar Ministers from contributing to the publications of the political organisations with which they are associated. However, in all cases where an article contains material which falls within the Departmental responsibility of another Minister, that Minister must be consulted. Payment should not be accepted for articles which draw on Ministerial experience or which have been prepared with any assistance from public resources.

105. The prohibition of the practice of journalism by Ministers above, does not extend to writings of a literary, sporting, artistic, musical, historical, scientific, philosophical or fictional character which do not draw on their Ministerial experience. While payment for the occasional piece is acceptable, regular payments are not.

106. Ministers are sometimes asked to give interviews to historians or to other persons engaged in academic research or in market opinion surveys, or to fill in questionnaires at the request of such people or organisations. Ministers should bear in mind the possibility that their views may be reported in a manner incompatible with their responsibilities and duties as members of the Government. Careful consideration should therefore be given to such invitations before they are accepted; in cases of doubt, the Prime Minister should be consulted.

Complaints

107. Ministers who wish to make a complaint against a journalist or a particular section of the media either to the Press Complaints Commission or to the Broadcasting Complaints Commission must have the authority of the Prime Minister. The nature of the complaint and the case for referring it to the appropriate body should be set out in a letter to the Chief Press Secretary at No 10, copied to the Secretary of the Cabinet.

Royal Commissions

108. The Prime Minister should be consulted if any Minister is invited to address a Royal Commission or Committee of Inquiry.

9. MINISTERS' PRIVATE INTERESTS

109. Ministers will want to order their affairs so that no conflict arises or is thought to arise between their private interests (financial or otherwise) and their public duties. They should normally make their own decisions on how best to proceed but in many cases, as is shown below, there are established precedents. Where there is a doubt it will almost always be better to relinquish or dispose of the interest but Ministers should submit any such case to the Prime Minister for his decision.

110. Where it is proper for a Minister to retain any private interest, it is the rule that he or she should declare that interest to Ministerial colleagues if they have to discuss public business in any way affecting it, and that the Minister should remain entirely detached from the consideration of that business. Similar steps may be necessary should the matter under consideration in the Department relate in some way to a Minister's previous private interests such that there is or may be thought to be a conflict of interest.

Public appointments

111. When they take up office Ministers should give up any other public appointment they may hold. Where it is proposed that such an appointment should be retained, the Prime Minister must be consulted.

Non-public bodies

112. Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy and thus give rise to a conflict of interest. Hence Ministers should not normally accept invitations to act as patrons of or otherwise offer support to pressure groups, or organisations dependent in whole or in part on Government funding. There is normally no objection to a Minister associating him or herself with a charity (subject to the points above) but Ministers should take care to ensure that in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those to whom appeals are directed (and for this reason they should not normally approach individuals or companies personally for this purpose). In any case of doubt, the Prime Minister should be consulted before a Minister accepts an association with such bodies. Ministers should also exercise care in giving public support for petitions, open letters etc.

Trade unions

113. There is, of course, no objection to a Minister holding trade union membership but care must be taken to avoid any actual or perceived conflict of interest. Accordingly, Ministers should arrange

their affairs so as to avoid any suggestion that a union of which they are a member has any undue influence; they should take no active part in the conduct of union affairs, should give up any office they may hold in a union and should receive no remuneration from a union (a nominal payment purely for the purpose of protecting a Minister's future pension rights is acceptable).

Financial interests

114. Ministers must scrupulously avoid any danger of an actual or apparent conflict of interest between their Ministerial position and their private financial interests. Such a conflict, or the perception of it, can arise:

- a. from exercise of powers or other influence in a way that does or could be considered to affect the value of interests held; or
- b. from using special knowledge acquired in the course of their Ministerial activities in ways which bring benefit or avoid loss (or could arouse reasonable suspicion of this) in relation to their private financial interests.

115. Apart from the risk to the Minister's reputation, two legal obligations must be born in mind:

- a. any exercise or non-exercise by a Minister (including a Law Officer) of a legal power or discretion or other influence on a matter in which the Minister has a pecuniary interest could be challenged in the courts and, if the challenge is upheld, could be declared invalid. The courts interpret conflict of interest increasingly tightly;
- b. Ministers are bound by the provisions of Part V of the Criminal Justice Act 1993 in relation to the use or transmission of unpublished price-sensitive information obtained by virtue of their Ministerial office.

116. These risks attach not only to the Minister's personal interests, but to those of a spouse or partner, of who are children who are minors, of trusts of which the Minister or a spouse or partner is a trustee or beneficiary, or of closely associated persons. They relate to all kinds of financial interests, including not only all kinds of financial instrument but also such interests as partnerships, unincorporated businesses, real estate etc.

117. It is not intended to inhibit the holding of Ministerial office by individuals with wide experience, whether of industry, a profession or some other walk of life. In order to avoid the danger of an actual or perceived conflict of interest, Ministers should be guided in relation to their financial interests by the general principle that they should either dispose of any financial interest giving rise to the actual or perceived conflict or take alternative steps to prevent it.

118. If for any reason the Minister is unable or unwilling to dispose of a relevant interest, he or she should consider, with the advice of the Permanent Secretary of the Department and, where necessary, of external advisers, what alternative measures would sufficiently remove the risk of conflict. These fall into two types: those relating to the interests themselves, and those relating to the handling of the decisions to be taken or influenced by the Minister.

119. As regards steps other than disposal which might be taken in relation to interests, the Minister might consider placing all investments (including derivatives) into a bare trust, ie one in which the Minister is not informed of changes in investments or of the state of the portfolio, but is still fully entitled to both the capital and income generated. This course would normally be useful only in the case of a widely-spread portfolio of interests. Alternatively a power of attorney may be suitable. However, this is a complex area and the Minister should seek professional advice because, among other things there may be tax consequences in establishing this kind of arrangement. Ministers should remember that Part VI of the Companies Act 1985 allows companies to require information as to the true owners of its shares, which could result in the fact of a Minister's interest becoming public knowledge despite the existence of a trust. It should also be remembered that even with a trust the Minister could be assumed to know the contents of the portfolio for at least a period after its creation, so the protection a trust offers against conflict of interest is not complete. Another step which (perhaps in conjunction with other steps) might provide a degree of protection would be for the Minister to accept an obligation to refrain from dealing in the relevant shareholdings etc for a period.

120. Unless adequate steps can be taken in relation to the financial interests themselves, the Minister must seek to avoid involvement in relevant decisions. The extent to which this can be done depends on the specific powers under which the Minister would be required to take decisions. For example:

- a. in the case of a junior Minister, it should be possible for the Ministerial head of the Department to take the decision or for the case to be handled by another junior Minister in the Department;
- b. in the case of the Ministerial head of Department or the holder of a specific office in whom powers are vested, it will normally be possible without risk of legal challenge to pass the handling of the matter to a junior Minister or appropriate official in the Department, or, exceptionally, to another Secretary of State. In such cases, legal advice should always be sought to ensure that the relevant powers can be exercised in this way.

121. In some cases, it may not be possible to devise such a mechanism to avoid actual or perceived conflict of interest, for example because of the nature or size of the investment or the nature of the Department's work. In such a case, or in any case where, after taking legal advice and the advice of the Permanent Secretary, the Minister is in doubt whether adequate steps have been or can be taken, he or she should consult the Prime Minister. In such a case it may be necessary for the Minister to cease to hold the office in question.

122. In addition to this general guidance:

- a. Partnerships. Ministers who are partners, whether in professional firms, for example solicitors, accountants etc, or in other businesses, should, on taking up office, cease to practise or to play any part in the day-to-day management of the firm's affairs. They are not necessarily required, however, to dissolve their partnership or to allow, for example, their annual practising certificate to lapse. Beyond this it is not possible to lay down precise rules applicable to every case; but any continuing financial interest in the firm would make it necessary for the Minister to take steps to avoid involvement in relevant decisions, as described in paragraph 120 above. Ministers in doubt about their personal position should consult the Prime Minister;
- b. Directorships. Ministers must resign any directorships they hold when they take up office. This applies whether the directorship is in a public or private company and whether it carries remuneration or is

honorary. The only exception to this rule is that directorships in private companies established in connection with private family estates or in a company formed for the management of flats of which the Minister is a tenant may be retained subject to the condition that if at any time the Minister feels that conflict is likely to arise between this private interest and public duty, the Minister should even in those cases resign the directorship. Directorships or offices held in connection with charitable undertakings should also be resigned if there is any risk of conflict arising between the interests of the undertakings and the Government.

123. In all cases concerning financial interests and conflict of interest Ministers may wish to consult financial advisers as to the implication for their (or their families') affairs of any action which they are considering to avoid any actual or potential conflict of interest. They should also consult the Permanent Secretary in charge of their Department, who is the Minister's principal adviser and who also, as Accounting Officer, has a personal responsibility for financial propriety and regularity. It is in the end for Ministers to judge (subject to the Prime Minister's decision in cases of doubt) what action they need to take; but they should record, in a minute to the Permanent Secretary, whether or not they consider any action necessary, and the nature of any such action taken then or subsequently to avoid actual or perceived conflict of interest.

Membership of Lloyd's

124. Any Minister who is a member of Lloyd's should abide by the guidance set out in the Annex to this document.

Nominations for international awards, etc.

125. From time to time, the personal support of Ministers is requested for nominations being made for international prizes and awards, eg, the annual Nobel prizes. Ministers should not sponsor individual nominations for any awards, since it would be inevitable that some people would assume that the Government was itself thereby giving its sponsorship.

Acceptance of gifts and services

126. It is a well established and recognised rule that no Minister or public servant should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts etc are offered to a member of their family.

127. This is primarily a matter which must be left to the good sense of Ministers. But any Minister in doubt or difficulty over this should seek the Prime Minister's guidance. The same rules apply to the acceptance of gifts from donors with whom a Minister has official dealings in this country as to those from overseas (paragraph 85 above), that is:

- a. Receipt of gifts should, in all cases, be reported to the Permanent Secretary;
- b. Gifts of small value (currently this should be put at up to £140) may be retained by the recipient;
- c. Gifts of a higher value should be handed over to the Department for disposal, except that
 - (i) The recipient may purchase the gift at its cash value (abated by £140)
 - (ii) If the recipient wishes to reciprocate with, and pay for, a gift of equivalent value, the gift received may be retained
 - (iii) If the Department judges that it would be of interest, the gift may be displayed or used in the Department
 - (iv) If the disposal of the gift would cause offence or if it might be appropriate for the recipient to use or display the gift on some future occasion as a mark of politeness, then the gift should be retained in the Department for this purpose for a period of up to five years;
- d. Gifts received overseas worth more than the normal travellers' allowances should be declared at importation to Customs and Excise who will advise on any duty and tax liability. In general, if a Minister wishes to retain a gift he or she will be liable for any tax or duty it may attract.

128. In the event of a Minister accepting hospitality on a scale or from a source which might reasonably be thought likely to influence Ministerial action, it should be declared in the House of Commons

Register of Members' Interests (or Register of Lords' Interests in the case of Ministers in the House of Lords).

**Outgoing Ministers:
acceptance of
appointments outside
Government**

129. On leaving office Ministers should seek advice from the independent Advisory Committee on Business Appointments about any appointments they wish to take up within two years of leaving office, other than unpaid appointments in non-commercial organisations or appointments in the gift of the Government, such as Prime Ministerial appointments to international organisations. Although it is in the public interest that former Ministers should be able to move into business or other areas of public life, it is equally important that there should be no cause for any suspicion of impropriety about a particular appointment. If therefore the Advisory Committee considers that an appointment could lead to public concern that the statements and decisions of the Minister, when in Government, have been influenced by the hope or expectation of future employment with the firm or organisation concerned, or that an employer could make improper use of official information to which a former Minister has had access, it may recommend a delay of up to two years before the appointment is taken up, or that for a similar period the former Minister should stand aside from certain activities of the employer.

10. MINISTERIAL PENSIONS

Participation in the Parliamentary Contributory Pension Fund

130. Ministers who have accrued pension rights in another pension scheme may, if they elect to participate in the Fund in respect of their Ministerial salary, and if the rules of the other scheme permit, also to have the value of those accrued rights transferred to the Fund. The Fees Office will advise on the additional benefits which will be secured by such a transfer payment.

Participation in other pension schemes

131. Ministers with accrued pension rights in another pension scheme who do not (or cannot) elect for a transfer payment may leave these as "frozen" rights in the other scheme, with no further contributions being payable during their tenure of office. Alternatively, if the rights are secured by an insurance policy (and assuming that the rules of the other scheme and the policy itself so permit) the policy could be transferred to them, either on a paid-up basis or with the right to continue payment of the premiums themselves.

132. Ministers who expect to resume their former employment on ceasing to hold Ministerial office and who elect not to participate in the Parliamentary Fund in respect of their Ministerial salary may remain in active membership (that is, with continued payments of contributions, and with their period of office counting as continued pensionable employment) of any pension scheme relating to that employment provided that this can be done under the rules of the scheme. In these circumstances the continued contributions may be paid by the Ministers alone, or by the former employer alone, or jointly, depending on the rules of the other scheme.

133. It must be emphasised that any arrangements made under paragraph 131 must not go outside the terms of the particular pension scheme. There would be no objection to a general alteration of the rules of a scheme when this is necessary to permit such arrangements; but approval could not be given for the addition to the scheme of a special provision relating only to the tenure of a Ministerial Office. If Ministers have any doubts about the propriety of any arrangements they intend making, the Prime Minister's Private Secretary may be consulted.

134. Ministers who elect not to participate in the Parliamentary scheme in respect of their Ministerial salary, and who make no arrangements of the kind set out in paragraph 131, may be entitled to claim tax relief on premiums paid under a "retirement annuity contract"

or "personal pension scheme" to provide additional pension etc, benefits for themselves or provision for their families in the event of death. Such contracts are issued subject to the limitations and conditions laid down in the Tax Acts. Relief is normally limited to 17.5 per cent of the Ministerial salary excluding, for a Minister in the Commons, the difference between a Minister's reduced salary as a Member and a Member's pensionable salary. Higher limits apply to those aged over 50 (in the case of retirement annuity contracts) or aged over 35 (with personal pension schemes).

135. The taxation effects of arrangements such as are mentioned in the paragraphs above may vary according to the Minister's particular circumstances. The Controller, Inland Revenue Pension Schemes Office, PO Box 62, Yorke House, Castle Meadow Road, Nottingham, NG2 1BG, will be willing to explain the effects for tax purposes of any proposed arrangements under paragraph 131; he will also give, on request, further information on the legislation and reliefs available in respect of retirement annuity contracts or personal pension schemes.

MEMBERSHIP OF LLOYD'S

1. A Minister holding office as Prime Minister, Chancellor of the Exchequer or as President of the Board of Trade (Secretary of State for Trade and Industry), or a Minister holding office as a Minister in the Treasury who is responsible under the Chancellor of the Exchequer for taxation matters relating specifically to Lloyd's, or as a Minister in the Department of Trade and Industry responsible under the Secretary of State for Trade and Industry for insurance matters relating specifically to Lloyd's, should not become an underwriting member of Lloyd's. Such a Minister, if already a member of Lloyd's on appointment, should cease underwriting during tenure of that office.
2. Apart from those Ministers covered by the specific requirements of paragraph 1 above, any Minister who is an underwriting member of Lloyd's should not take an active part in the management of the affairs of syndicates of which he/she is a member, and should on appointment as a Minister withdraw from any such active participation in management. Ministers who are underwriting members of Lloyd's should arrange their syndicate participation solely through a Members Agent Pooling Arrangement (MAPA). This requirement will operate from the 1995 year of account, or from the first year of account after appointment for newly appointed Ministers, subject to time being available for the procedures for joining a MAPA.
3. No Minister who is a current underwriting member of Lloyd's should take part in any Departmental or collective discussions or decision affecting Lloyd's whether directly or indirectly (eg the Secretary of State for Transport in relation to questions concerning marine, aviation and transport insurance, the Secretary of State for Employment on questions concerning employers' liability insurance, Treasury Ministers on tax issues affecting Lloyd's).
4. Some Ministers may have ceased underwriting but still have open syndicate commitments in respect of past membership. Such Ministers should take no part in those Departmental or collective discussions or decisions affecting Lloyd's (whether directly or indirectly) if their continuing benefits or liabilities in respect of the period before cessation might thereby be affected, and might therefore make them vulnerable to reasonable suspicion of exerting or being in a position of undue influence.

5. A Law Officer who is an underwriting member of Lloyd's, or who still has open syndicate commitments in respect of past membership, should not tender advice on the formulation, application or enforcement of legislation relating to Lloyd's, or take part in any collective discussion or decision on any matters affecting Lloyd's and should, as far as is practicable, avoid taking enforcement decisions relating to Lloyd's.

6. Where a Minister is contemplating investing in a corporate entity at Lloyd's, or has made such an investment prior to Ministerial appointment, the provisions of paragraphs 109-123 apply.

7. A Minister in whom powers under legislation relating to Lloyd's are vested should not delegate the exercise of those powers to any other Minister who is an underwriting member of Lloyd's or who still has open syndicate commitments in respect of past underwriting.

8. Every Minister is required, on first appointment to Ministerial office, to obtain the Prime Minister's written permission before continuing a connection with Lloyd's, however nominal. Any Minister wishing to establish or re-establish any such connection during his term of appointment should likewise obtain the Prime Minister's permission to do so. Before granting permission, the Prime Minister will need to be satisfied that the conditions indicated above will be met.

9. In addition, the Secretary of the Cabinet is required to keep a list of Ministers who are members of Lloyd's. He will ask all Ministers on appointment for the first time to Ministerial office whether they are a member of Lloyd's and if so whether they propose to continue or to suspend underwriting while they hold that office. He will also ask those Ministers who are members of Lloyd's and who are appointed to a subsequent Ministerial office whether they propose to continue or suspend underwriting while they hold that office.

10. Where a Minister has a shareholding in an investment trust or any other entity which holds a corporate membership of Lloyd's, that shareholding should be treated on the same basis as any other by a Minister (see paras 109-123).

TAB R

The Code of Conduct for Members of Parliament

Prepared pursuant to the Resolution of the House of 19th July
1995

I. Purpose of the Code

The purpose of the Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large.

II. Public duty

By virtue of the oath, or affirmation, of allegiance taken by all Members when they are elected to the House, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.

Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.

III. Personal conduct

Members shall observe the general principles of conduct identified by the Committee on Standards in Public Life^[1] as applying to holders of public office:-

"Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example."

Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake

any action which would bring the House of Commons, or its Members generally, into disrepute.

The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.

Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Interests and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with Ministers, Government Departments or Executive Agencies.

In any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials.

No Member shall act as a paid advocate in any proceeding of the House.

No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.

Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain.
