

## Unit 6: Regulation and Conflicts of Interest

### Learning Objectives

#### How do legislators avoid conflicts of interest?

After studying this unit, you should be able to:

- Explain why legislators are particularly vulnerable to encountering conflicts of interest;
- What can legislatures do to prevent their members from encountering conflicts of interest;
- List activities that constitute conflicts of interests that legislators must disclose to comply with the codes of conduct;
- Give examples of activities and interests that may be restricted or regulated to prevent conflicts of interest.

### The Fine Line

Legislators are charged with walking a fine a line between the freedom of simple citizenship and compliance through the guidelines of complex government representation. As a result, they are often vulnerable to conflicts between their personal interests and those of the government. This unit considers why legislators

are particularly prone to conflicts of interest, and explains the steps that can be taken to prevent the ethical violations in conflicting personal and professional interests. This unit will also suggest some of the more successful prevention methods, such as legal codes of conducts, regulations concerning the disclosure of interests, gifts, travel restrictions, employment and post-tenure employment.

### The Vulnerable Legislature

The mere nature of his or her position makes the legislator likely to fall victim to conflicts of interest since, in any given week, most legislators will have several issues brought before her for voting. If the parliamentarian has a personal interest in any of the issues of the resolution, the parliamentarian has a conflict of interest. For example, let us assume that a hypothetical parliamentarian invested incubation funds to start her neighbor's transportation company and, in exchange, makes a percent of the profit earned by the company. If the country's government wishes to hire the transportation company to transport the goods for an agricultural project the parliamentarian is faced with a conflict of interest. But conflicts of interests are often quite nebulous. Some other common examples of conflicts of interests include the following: use of public position to obtain personal benefit, providing benefits to influence official actions, use of confidential government information, post-governmental employment for 2-years, receipt of gifts by officials or employees above a certain value, receipt of fees or honoraria by public officials or employees, representation of private clients by public officials or employees, financial conflicts of interest, nepotism, political activity by employees, competitive bidding, outside employment or business activities by public officials or employees, travel payments from non government services, and more. While there are trends for what defines a conflict of interest, they are defined differently in different governments.

### **Preventing Conflicts of Interest**

In an increasing number of governments, legislation exists to ensure that the spheres of legislators' private activities do not present a conflict of interest with their

potential influence over officers' and agencies' responsibilities to promote the public interest (Zimmerman, 1994). Among the most important steps that legislatures have taken to prevent conflicts of interest from occurring is the adoption of codes of conduct. Codes of conduct which are updated regularly, are a simplified version of the law meant to guide behavior and decisions.

The disclosure of all economic and financial interests including both assets and income, by MPs is a practice that is found in 23 percent of the countries in the world for which the Inter-Parliamentary Union (IPU) data are available. In fact, 41 countries out of 181 require that members declare their personal assets (See box 2).

**Box 1:  
List of disclosure**

Codes of conduct usually require members of the parliament or state legislature to disclose their interests concerning:

Tax returns	Ownership interest in a business
Sources of patrimonial income	Real estate interests
Investments	Offices and/or directorships held
Sources of income of business of a partner or shareholder	Creditor indebtedness
Leases and other contacts with public entities	Retainers
Compensated representation before public entities	Fees and honoraria
Professional or occupational licenses held	Reimbursement of travel expenses from private sources
Deposits in financial institutions	Cash surrender value of insurance
Private employer or nature of private employment	Professional services rendered
Identification of trusts by trustee	Identification of trusts by beneficiary
Names of immediate family members	Financial interests of spouse

Depending on the country, the disclosure of interests either requires or suggests that parliamentarians declare their present interests before debating an issue related to those interests. This disclosure of interests is a relatively common protection against conflicts of interest. This practice is included in the ethics rules of several countries, including Australia, Canada, Czech Republic, France, Germany, Ireland, Korea, Mexico, Poland, South Africa, Spain, Sweden, Taiwan, the United Kingdom and the USA. The countries have conflict of interest restrictions that aim to prevent personal gains through this public mandate. There is, however, considerable variation in how stringently these regulations are followed. For example, in Germany, Ireland, and the United Kingdom members must disclose their interests and potential for conflicts of interest but they are nonetheless allowed to participate in the deliberations. By contrast, in Australia, Canada and South Africa members of the parliament are not allowed to vote on issues that may generate a conflict of interest. Similarly, the Swedish Parliament in 1996 ruled that a Member might not participate in the deliberations of the Chamber or be present at a meeting of a committee on a matter concerning this member or a close relative.

### **Deeper Disclosure**

In addition to asking legislators to disclose their interests, codes of conduct may impose some additional restrictions. Some of the restrictions apply while the legislator is in office, for example the gifts a legislator is entitled to receive while he/she serves in office, or remuneration for travel expenses. Some restrictions even apply after the legislator's tenure in office has ended, for example in the case of employment opportunities.

The gift and travel restrictions mentioned above are often encompassed in the ethics rules of various countries. For example, in Argentina the Criminal Code directly regulates that MPs are not allowed to accept gifts that are given because of the members' post. In Australia, members *are* allowed to receive gifts as long as they do not generate a conflict of interest. The Australian

parliament ruled with the 1984 House resolutions and the subsequent modifications (in 1986, 1988 and 1994) that gifts must be disclosed on a Registry of Members' Interests if valued more than AUS \$500 (US \$379 in 2006) for gifts received from official sources and more than AUS \$200 if received from unofficial sources. Gifts received from relatives and personal friends are exempt from disclosure. In the Czech Republic and France, MPs can also receive gifts but in France gifts must be declared and in the Czech republic MPs have to disclose the value of the gifts in their financial report. In Germany, there are no restrictions on the types of gifts parliamentarians can receive, but all gifts valued more than DM 10,000 (US \$5,425 in 1999) must be disclosed. In the UK gifts and benefits not related to the membership in the House are exempted from disclosure. By contrast, all gifts valued more than UK £125 and benefits valued more than .5% of the member's or spouse's salary must be disclosed. The strictest regulations are found in the United States where all gifts must be disclosed and gifts valued more than US \$50 or an annual cumulative value of US \$100 cannot be accepted. The US is also different because these regulations are set separately in addition to the code of conduct.

In addition to restrictions on gifts, the ethics rules of several parliaments also establish travel restrictions. In Australia, for example, all sponsored travels must be declared. In Canada only foreign trips financed by foreign donors must be disclosed. In France, there is no restriction on members' travels, provided that they declare whether another party paid for the travel. German and Irish parliamentarians only disclose travel expenses if they exceed US \$5,425 and US \$660, respectively. In Italy, all contributions and services exceeding US \$5,500 must be disclosed along with the name of the donor. In the US, members and staff are allowed to travel at the expense of private sources and may accept payment for travel expenses of the spouse or one child. However, national travel cannot last more than 4 days and international travel cannot last longer than 7 days. Travel can be paid by foreign sources only if travel is part of a mutual cultural exchange.

## Conclusion

From travel expenses and gifts to personal investments with government-contracted private companies, legislators all over the world are often required to follow certain ethical standards. Codes of conduct can establish restrictions and regulations with regard to several ethical matters affecting parliamentarians.

### Unit 6 Questions

Please answer each of the following questions. If you are taking this course in a group you may then meet to discuss your answers.

1. Why are legislators particularly exposed to having conflicts of interest?
2. What can legislatures do to prevent their members from having conflicts of interest?
3. What activities may be regulated or restricted by codes of conduct?
4. Does the disclosure of interests represent a protection against conflicts of interest?

### Relevant Internet Resources

*Inter-Parliamentary Union*  
[www.ipu.org](http://www.ipu.org)

### Select Bibliography

National Democratic Institute, *Legislative Ethics: A Comparative Analysis*, Legislative Research Paper #4, 1999.

Dr. Andrew Brien (Consultant), *A Code of Conduct for Parliamentarians?* Research Paper 2, 1998-99, Department of the Parliamentary Library, Parliament of Australia.

Joseph Zimmerman, *Curbing Unethical Behavior in Government*, Westport, Greenwood, 1994.

