

GUIDELINES FOR MANAGING CONFLICTS OF INTEREST

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Context



Context

- What is the public interest?
- How clear is the distinction between the State and the market?
- How clear is the distinction between official duties and personal obligations?
- How clear is the segregation of functions in the public administration?



Concept

Conflict of interest ≠ Corruption

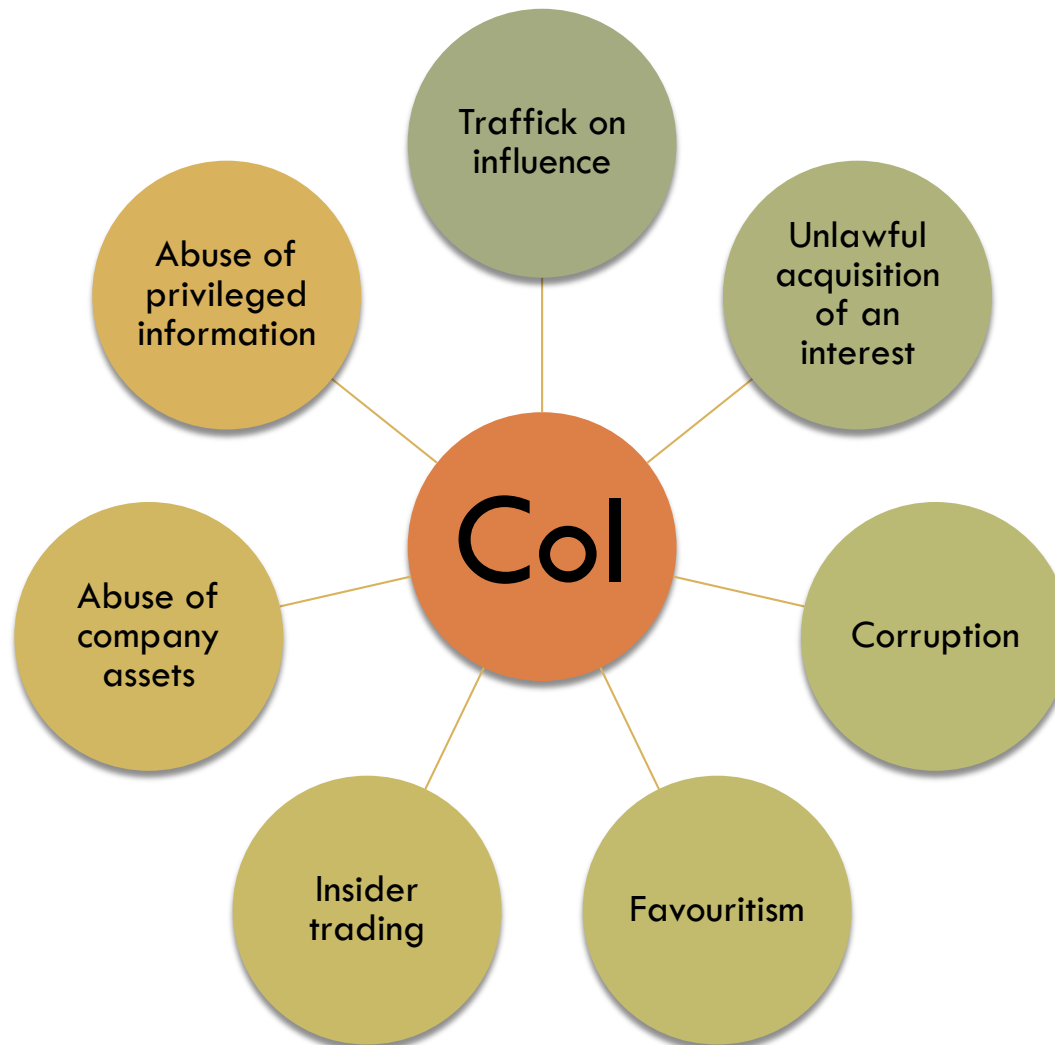
“[A] conflict between the public duty and the private interest of a public official, in which a public official’s private-capacity interest could improperly influence the performance of their official duties and responsibilities.”

(2003 OECD Guidelines for Managing Conflicts of Interest)

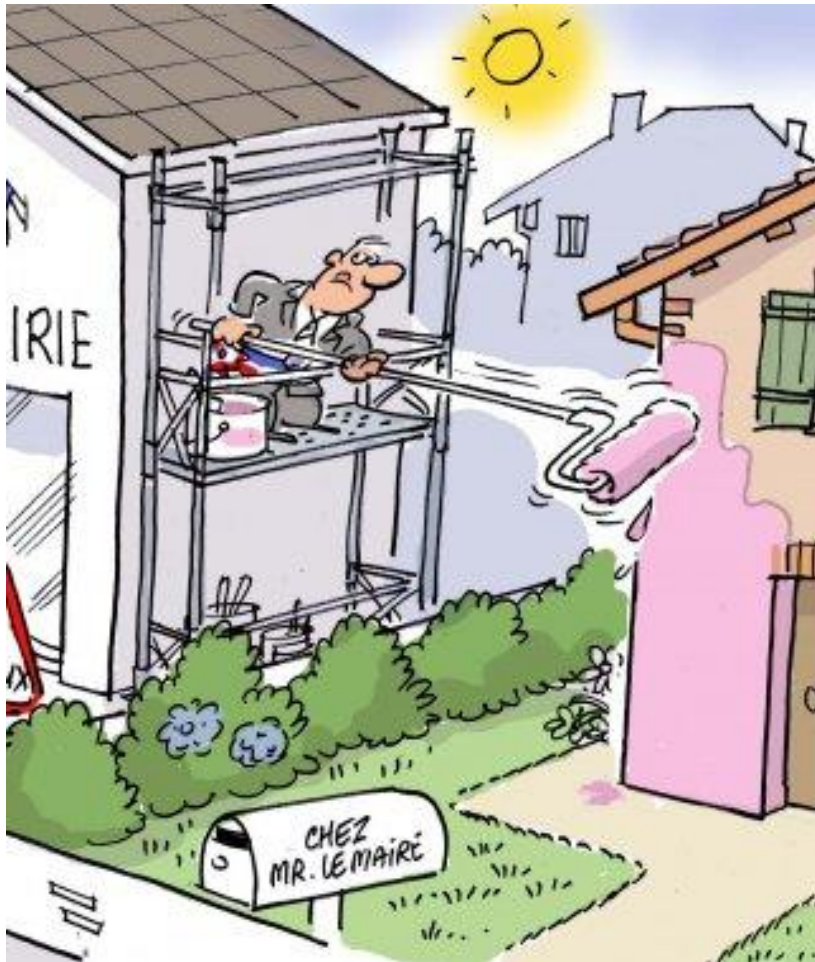
“Corruption is the abuse of entrusted power for private gain.”

(Transparency International)

Col and related criminal offences



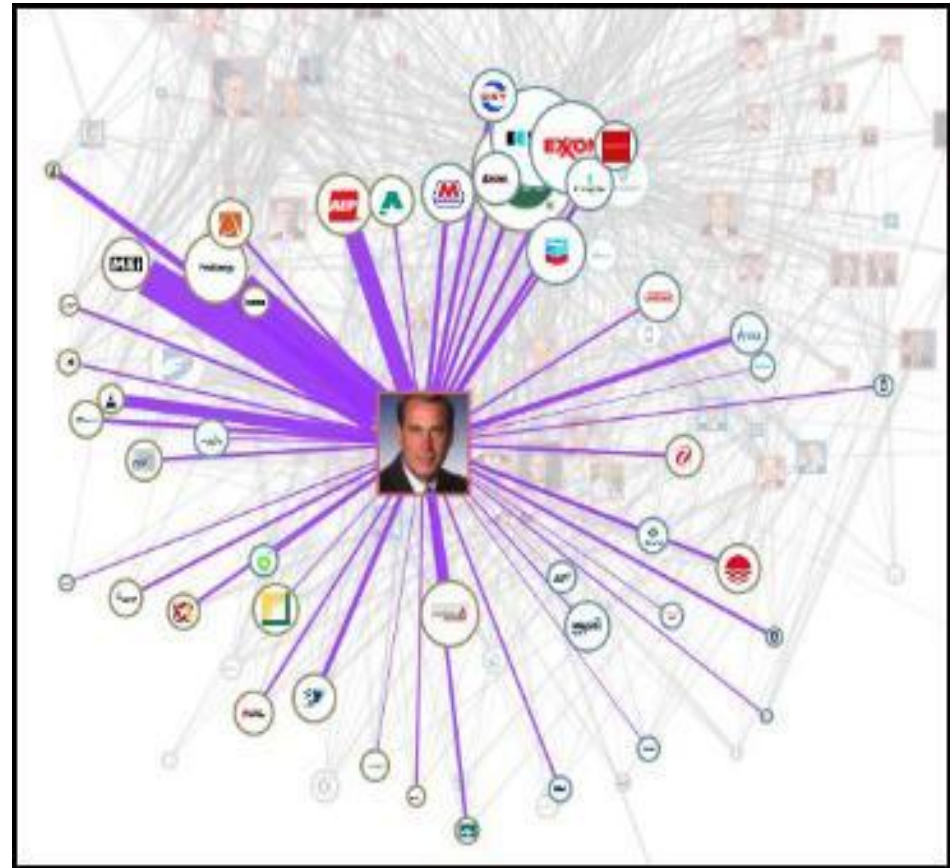
Unlawful taking of interest



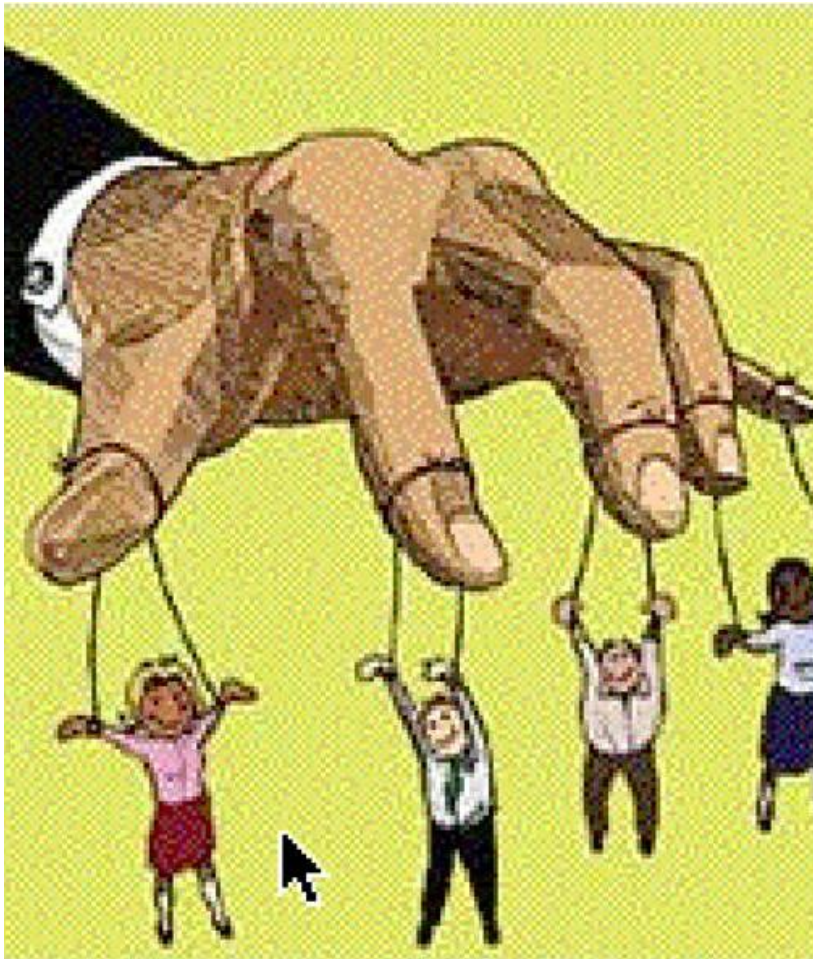
- In some countries, in particular those with a French penal tradition, conflicts of interest tend to be addressed in a very legalistic way.
- It is forbidden for a politician or a public official to acquire or receive an interest or equity stake, or take custody thereof, either directly or indirectly, in any business transaction for which he is responsible.

Influence peddling

- Influence peddling is the illegal practice of using one's influence in government or connections with persons in authority to obtain favours or preferential treatment for another, usually in return for a payment
- This practice is similar to corruption and often involves individuals (*brokers*) that trade privileged information and influence



Pulling strings

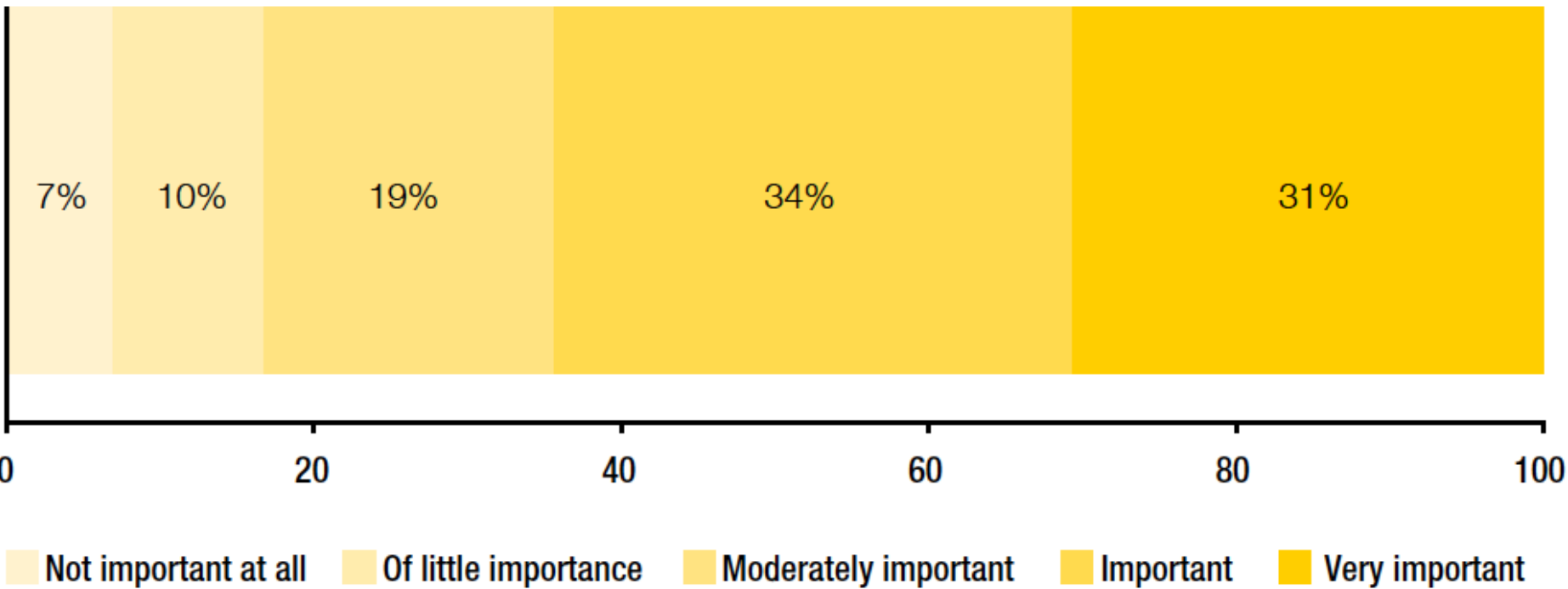


- Some forms of influence peddling may be off the radar for judicial authorities as they do not fit the definition of “trading in influence”
- Pulling strings is very pervasive in some countries: it is practiced by everybody at all government levels

Figure 4: How important are personal contacts?

Average percentage from the 107 countries surveyed

In your dealings with the public sector, how important are personal contacts and/or relationships to get things done?



Source: Global Corruption Barometer 2013

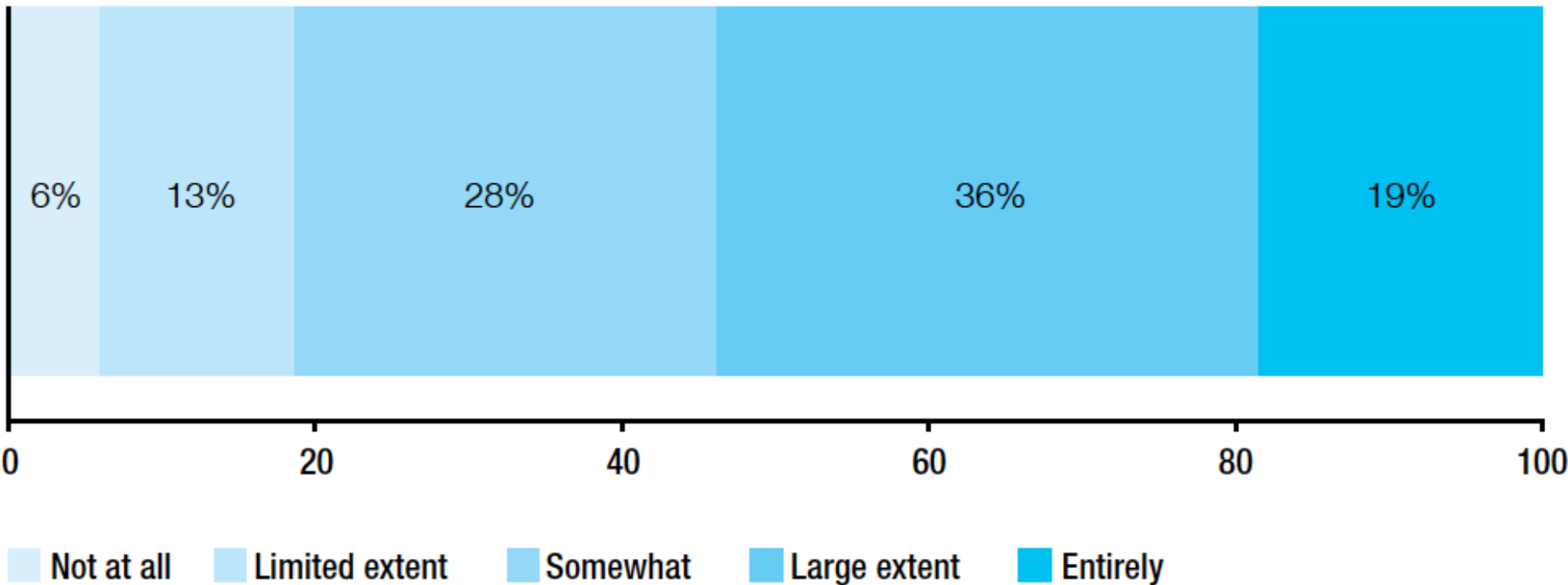
Legal/institucional corruption

- Conflicts of interest are also associated with the concept of legal or institutional corruption
- What is legal corruption?
 - ▣ *Legal or institutional corruption is where the institutional decision-making mechanisms are captured by economic interests in order to create rents through the manipulation of public policy and market regulation for their own benefit and by transferring the costs and hazards of this public dealing to the taxpayer*

Figure 5: Undue influence of government

Average percentage from the 107 countries surveyed

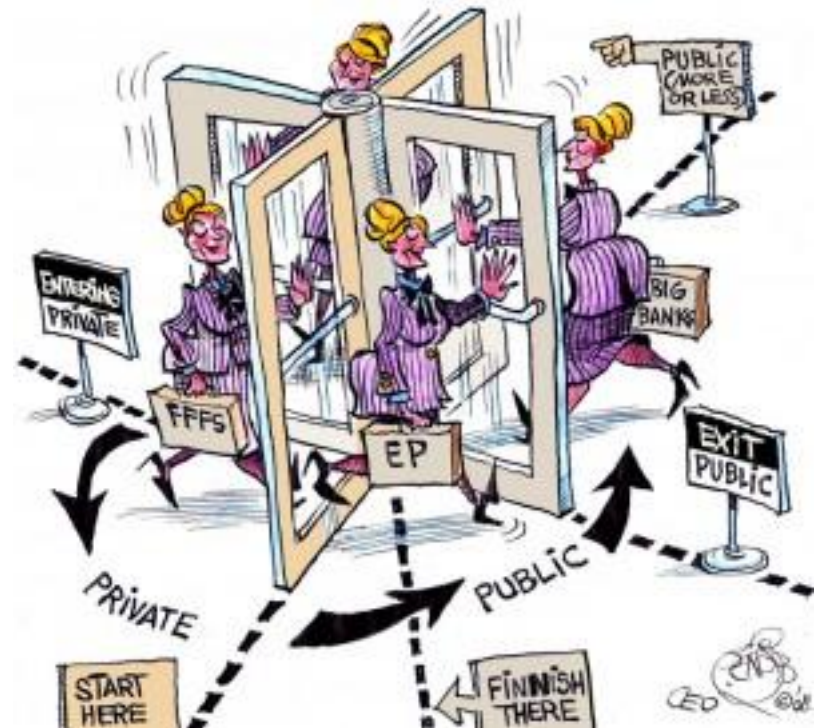
To what extent is this country's government run by a few big interests looking out for themselves?



Source: Global Corruption Barometer 2013

Revolving door

- The revolving door is a symptom of the blurring of the public/private divide
- This is about private businesses offering highly-paid post-office jobs to government officials, MPs, members of regulatory bodies, or senior public officials with managerial capacity in exchange of privileged access to inside information about on going and future government deals, influence over legislation/regulation, undue advantage in public projects and contracts, etc.



Lobbying and consulting

- Outside employment is barred in many countries for conflict of interest reasons
- Many political or senior public officials have a regular and close relationship with lobbying or consulting firms
- Some give paid advocacy to multiple clients relating to their parliamentary or regulatory work
- This industry has grown parallel to the increased regulatory function of the State



Col Dilemmas

- VÍDEO & DEBATE

- http://www.youtube.com/watch?v=xnRpMQvW_ow

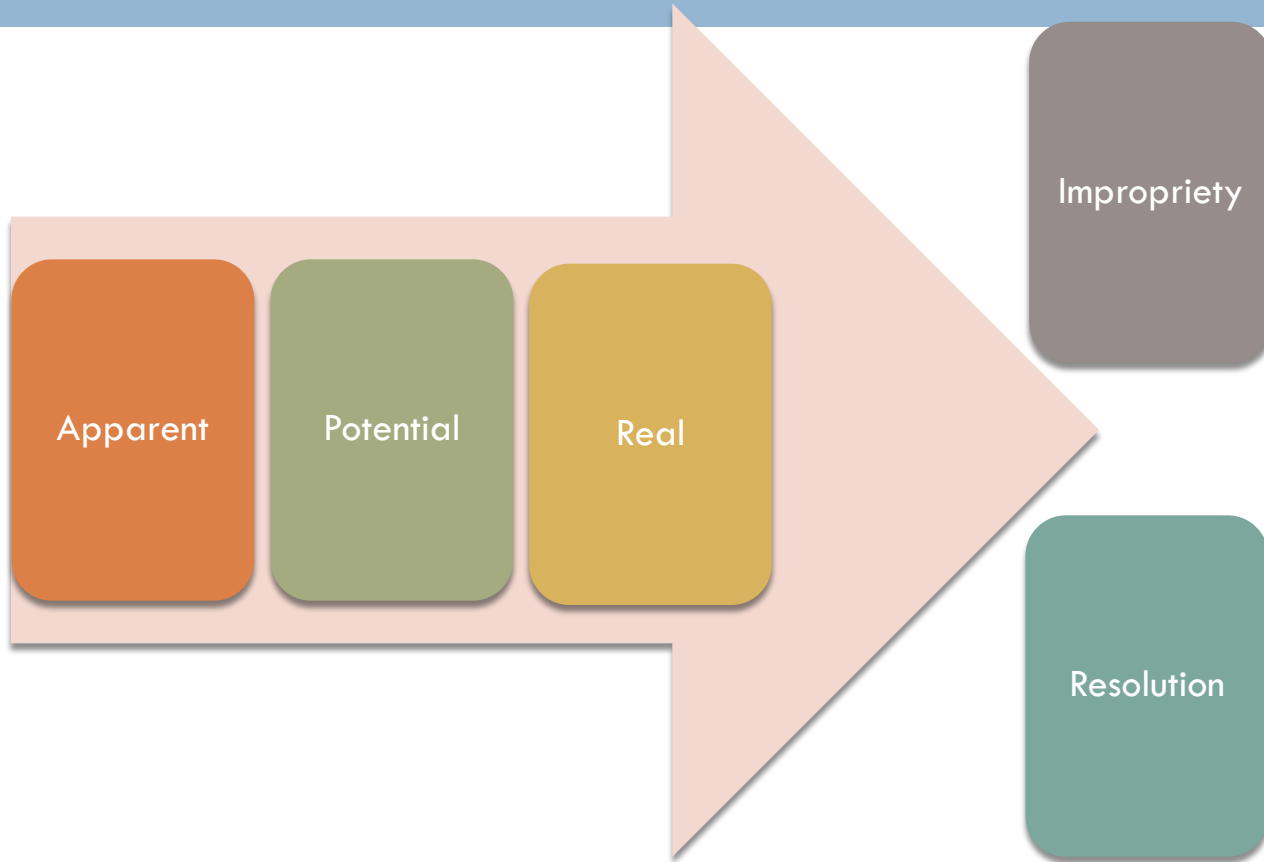


Types of conflicts of interest

In terms of their intensity

- **Apparent** – a situation in which the elective or public official has a private interest which is such as to appear to influence, the impartial and objective performance of his official duties
- **Potential** – a situation in which the elective or public official holds private interests that may influence, the impartial and objective performance of his official duties in the future
- **Real** – a situation in which the elective or public official is in a position to be influenced by his private interests when doing his job

Different types of Col



Pecuniary interests

- ***Pecuniary interests*** involve an actual or potential financial gain.
 - ▣ These can derive from three situations:
 - **Managing business from inside:** marketization of discretionary authority, privileged information and expertise;
 - **Managing parallel business:** using insider knowledge and experience to launch private business in the same sector or to sell to private actors while in office;
 - **Managing business after departure:** revolving door/*pantouflage*, taking employment or positions in companies or CSOs in the same sector which previously fell under his/her supervision or regulation.

Non-pecuniary interests

- **Non-pecuniary interests** do not have a financial component, but still involve a breach of duties
 - ▣ They may arise from personal or family relationships, or involvement in sporting, social or cultural activities.
 - **Facilitation** of administrative procedures (deadlines, requisites, etc.) to a friend without benefiting financially
 - **Nepotism** in recruitment procedures
 - **“Pulling strings”** inside the organization on behalf a family member to get him a service or benefit he is not entitled to
 - **Bias** is making decisions or treating citizens



Risk areas





NIS Findings: Major Col practices detected at different governance levels

- Revolving door system (Ministers and Junior Ministers)
- Traffic of influence by advisers and junior cabinet members

DECISION-
MAKING
LEVEL

LEGISLATIVE
LEVEL

- MPs sitting in strategic committees while holding jobs as consultants in major law firms and consultancies
- Paid advocacy

- Recruitment of experts or board members to regulatory bodies from major companies/banks falling under its supervision

REGULATORY
LEVEL

ADMINISTRATIVE
LEVEL

- Secondary jobs
- Anticipated retirement schemes to open private businesses in the same domain of activity



NIS Findings: **Most common issues related to Col Regulation and Supervision**

- Low compliance with declaratory obligations (register of interests and assets disclosure)
- No triangulation of data
- No oral or written disclosure of interests prior to entering public business
- Patchy regulatory framework and dispersion of control mechanisms (three declarations; three monitoring bodies; three universes of analysis)
- Format, composition and mandate of the Ethics Commission is inadequate to monitor Col in public affairs (in particular privatizations, PPP, and concessions)
- No reporting of decisions and disciplinary sanctions
- No proper enforcement of three-year quarantine period for Ministers
- Junior ministers, advisers and cabinet members are exempt of any sort of control and yet they have access to all the information concerning the decision-making process



Managing Col

Why should we bother?

- Conflicts of interest compromise the achievement of organizational objectives
- Damage the image/reputation of objectivity and impartiality of public institutions
- Lead to a breakdown of trust in public actors and institutions.

WHAT CAN I DO?

Four-step procedure to handle a Col

Get acquainted with the rules and norms governing your office

Ponder whether your colleagues and the public at large would approve your conduct

Seek professional advise or counselling

If you feel internal disclosure is likely to be inconsequent or trigger reprisals, seek disclosure to an external entity

WHAT CAN MY ORGANIZATION DO?

Five dimensions of Col Management

- Recruitment and career policy
- Guidance
- Control
- Leadership
- Public scrutiny/involvement

Four approaches at mitigating Col



Most common Col control measures

- **Rules of Disclosure**
 - Assets declarations
 - Registers of interests
 - Gifts & hospitality rules/registers
- **Incompatibilities/impediments**
 - Restrictions on additional employment
 - Restrictions of outside concurrent appointments (e.g. party positions, football club, CSO)
 - Restriction of post-office business/CSO jobs or activities
- **Other business restrictions**
 - Restrictions on using official/inside information for personal purposes
 - Personal and family restrictions on property titles of private companies
 - Divestment either by sale or the establishment of a trust or a blind management agreement

Col management policy

- Establish the context
- Identify risk factors
- Detect specific occurrences and evaluate seriousness of impact
- Analyse occurrences
- Respond to conflict of interest
- Disseminate Col management policy at workplace
- Always take on board external perceptions
- Act in a timely, prudent but decisive manner
- Beware of deceiving analogies

Concluding remarks

- Col is an organizational problem and needs a management policy
- It is not sufficient to have a dedicated **Col law**, but to implement a **Col management framework**
- **Leadership** support for Col management policy needs to be **assertive** and **consistent**
- Apparent, potential and real Col need **systematic monitoring**
- Col management framework should **always involve the public**

OBLITI PRIVATORUM PUBLICA CURATE

“Forget private interests, concern yourself
with public affairs”

(Latin inscription above the doorway leading from Dubrovnik's 15th-century Rector's Palace into the Town Hall)