

Businessmen in Politics and Politicians in Business

Problem of Revolving Door in Georgia

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Introduction

The subject of ‘revolving door’ (movement of individuals between positions in the public and the private sectors) has been drawing increasing attention worldwide. The topic has become especially significant because of the closer interaction between government and business resulting from outsourcing of services through public procurement and privatization of formerly state-owned assets. The 2011 assessment of National Integrity Systems conducted by Transparency International in 26 countries of the European Union identified the revolving door phenomenon as one of the primary current sources of corruption risks in the region.

The issue is equally important for Georgia. While the country has made impressive progress in terms of fighting corruption since 2004 and certain forms of corruption (such as petty bribery) have been effectively eliminated, there is a widespread perception among the public that corruption persists at higher levels of public administration. According the 2012-2013 Global Corruption Barometer survey, the majority of respondents in Georgia believe that corruption remains a significant problem in a number of key institutions, including judiciary, the media, Parliament, the public administration, and the private sector.

Opaque interaction between the public and the private sectors is likely to be among the sources of this perception among Georgian citizens. The country has witnessed multiple cases of influential businessmen turning into politicians, as well as politicians turning into wealthy and successful businessmen in a suspiciously short period of time, while companies with political connections have received various benefits from the state. Absent proper regulation and sufficient levels of transparency, this situation is set to undermine citizens’ trust in the integrity of public institutions, regardless of whether or not corruption has actually occurred in each of such cases.

This report examines the concept of revolving door and international practices in this field, as well as Georgia’s existing legal framework for dealing with corruption risks arising from this phenomenon and some practical examples from recent years. It also offers a number of recommendations for improving the regulatory framework.

I. Executive Summary

The term “revolving door” refers to movement of individuals between the public and the private sectors. Although such movement can have certain benefits, such as the introduction of effective management practices from the private sector to the public agencies, it also produces significant risks of conflict of interest and corruption as closer ties develop between government and business. Public officials with business background can use their position to benefit companies in which they have a stake, while former government members who move to the private sector can help their companies obtain unfair advantages through their remaining connections in the government. The revolving door can therefore have both positive and negative consequences and regulation of this phenomenon should aim to minimize the risks instead of stopping the movement completely.

Revolving door is a significant issue in Georgia as many individuals have turned from influential businessmen into high-level officials (or vice versa) in the country’s recent history. This is partially the result of an underdeveloped party system where political parties are structurally weak and recruit their candidates for elections from outside, often opting for wealthy businessmen who can contribute to their campaign funds.

Five of the country’s eight prime ministers since 2004 either joined the government from the business sector or moved to the business sector immediately after their resignation. A number of prominent businessmen have been elected to Parliament, while some high-ranking members of the executive branch have made successful careers in business. Similar developments have taken place at the local government level and in the country’s independent regulatory bodies.

There are number of problematic aspects of the revolving door in Georgia that aggravate the risks associated with this phenomenon and have the potential to undermine the public’s trust in the integrity of government institutions. If left unattended, these factors can therefore increase the levels of both actual and perceived corruption:

- Although Georgia has basic regulations designed to prevent conflict of interest resulting from the ties of public officials with private companies, there are notable gaps in the legal framework.
- The existing regulations are too basic/general and designed with the entire public sector in mind, and there is a notable lack of secondary legislation and codes of ethics that would supplement the primary legislation and address the specific risks associated with particular offices and agencies.
- It is not clear which agency is responsible for the enforcement and monitoring of the existing conflict of interest and revolving door regulations. No agency is monitoring the adherence of former public officials to the existing post-employment restrictions. As a result, some public officials have evidently been able to violate these rules without any ramifications.
- Georgia has a sound system of asset disclosure for public officials whose asset declarations are accessible online. However, the requirement of asset disclosure does not presently extend to all relevant members of the public service, while public officials are not required to report beneficial ownership of private companies. These gaps make it difficult to monitor links between public officials and business.
- The majority of local government members presently do not have the status of public officials and are therefore exempt from the relevant regulations and restrictions. This creates significant

corruption risks since Georgia has a single-tier system of local government where local councils represent relatively large districts and cities with sizeable budgets.

- The existing post-employment restrictions do not extend to the members of Georgia's independent regulatory bodies, which creates a significant risk of these bodies falling under the influence of the sectors that they are supposed to supervise.
- A number of companies connected with members of Parliament have benefited from their dealings with the state either by being awarded large government contracts, by having the law changed in a way that suited their interests, or by receiving favorable treatment from law enforcers. In a similar way, companies connected with influential former members of the executive branch have received millions of lari in government contracts, along with various exclusive rights and licenses and tax breaks.
- Only a formal investigation could determine whether corruption did, in fact, occur in the cases described above. However, the repeated success of companies connected to influential members of the legislature and the executive branch is set to undermine the public's trust in the integrity of these institutions.
- Some members of Parliament with significant business connections switched sides shortly after their party was voted out of power, raising suspicions about the reasons why they opted to run for office in the first place.
- Several members of the new government which assumed power after the October 2012 elections came to the public sector straight from business (including several officials who previously worked for the prime minister's Kartu group of companies). The current leadership of the Ministry of Energy had strong connections with private companies operating in the sector. This creates further risks and the government needs to urgently address the existing regulatory gaps in law and in practice in order to prevent the perceived conflicts of interest from turning into very real ones.

A number of steps would take Georgia a long way toward addressing the existing shortcomings of its regulatory framework. These include both measures designed specifically to deal with revolving door and broader reforms meant to increase transparency and accountability in decision making (which would, indirectly, also reduce the risks associated with revolving door):

- It is necessary to address the current gaps in the primary legislation and to supplement it with secondary legislation that would be designed with specific risks of particular offices in mind.
- There is a need to clearly identify the agency responsible for the enforcement and monitoring of the conflict of interest regulations, or for regulating revolving door.
- Changes are needed in the system of asset disclosure. The circle of public service members required to file asset declarations should expand, public officials should be required to report beneficial ownership of companies, and the Civil Service Bureau should introduce a mechanism for routine review to detect irregularities.
- Post-Employment monitoring could be improved by requiring public officials to file asset declarations one year after leaving the office.
- Restrictions must be imposed on the movement of individuals between independent regulatory commissions and the business sectors which they are expected to supervise. Former commission members must be prohibited from joining companies operating in respective sectors immediately after resignation (the so-called cooling-off period).
- The authorities must show a real commitment to strengthening the agencies that can potentially help reduce the risks arising from the interaction between the public and the private

sectors. The State Audit Office and the Competition Agency are two such bodies and both are weak at present.

- More generally, the government needs to reduce the scope for subjective and opaque decision making during the interaction between the public and the private sectors. This would require improving the legislation governing public procurement and privatization and reducing to the minimum the number of cases where government contracts or public property can be awarded to private companies without open competition.

II. What is Revolving Door?

Background

The term 'revolving door' refers to the movement of officials between public and private sector employment. This phenomenon is inevitable in every country, and can have beneficial results. It has the potential to enhance the efficiency of both sectors through better communication and the exchange of expertise and experience. However, such movement also holds the potential for conflicts of interest to arise, and for former officials to abuse the inside knowledge, influence and information gained while in government for unfair personal or commercial gain.

This movement between sectors, and the associated risks, has been accelerating in recent decades as the line between the public and private sectors becomes increasingly blurred. Privatization and the resulting need to regulate privatized industries, public-private partnerships and other novel funding structures, and a greater willingness of governments to learn from the private sector and bring in specialist knowledge, have all increased the inter-penetration of the two spheres. Georgia has also experienced these trends, with its civil service largely position based and open to external appointments, frequent ministerial movement to and from the business world, and large scale privatization undertaken since 2003.

In response, many countries have been creating or strengthening their regulatory frameworks to better control the post-public employment activities of ministers, legislators and civil servants. The challenge is to regulate the revolving door in a way which strikes a balance between, on the one hand, safeguarding a dynamic labor market and attracting the best candidates to public service, and on the other hand ensuring that officials and ministers will always support the public interest, and not private interests, when taking decisions and forming policy.¹ This is a challenge Georgia must also confront.

Nature of the Problem

The 'revolving door' is a problem wherever it compromises the integrity of public decision making, policy formation or contracting. They affect any official with significant decision making power or a high profile, including ministers, senior civil servants and legislators. These risks are constant, but are likely to be most intense immediately before and after changes of government, or during significant downsizing, privatization and outsourcing of government activities. These are some of the most common ways this may happen:²

¹ TI (2010) 'Regulating the Revolving Door', *Working Paper #06*, available at http://www.transparency.org/whatwedo/pub/working_paper_06_2010_regulating_the_revolving_door; OECD (2010) 'Post-Public Employment: Good Practices for Preventing Conflict of Interest', available at http://www.planejamento.gov.br/secretarias/upload/Arquivos/seges/arquivos/OCDE2011/OECD_Post_Public.pdf

² OECD (2007) 'Public Integrity and Post-Public Employment: Issues, Remedies and Benchmarks', *Public Governance Committee: Expert Group Meeting on Conflict of Interest*. 'Public Integrity and PPE...'; TI Hungary (2012) 'The Revolving Door Phenomenon in Hungary', available at http://www.transparency.hu/uploads/docs/revolving_door_final.224.pdf; TI UK (2011) 'Cabs for Hire? Fixing the Revolving Door between Government and Business', available at <http://www.transparency.org.uk/our-work/publications/10-publications/132-cabs-for-hire-fixing-the-revolving-door-between-government-and-business>

- **Using Influence and Contacts.** Officials may use contacts in government to gain leverage to decision making after they have left. Incumbent officials may feel obliged or pressured into granting them favorable decisions. This links regulation of the revolving door and strong competition policy, as these activities damage the competitive environment and a free and fair economy.
- **Using Insider Information.** A former government employee may use commercially sensitive information gained while in office to the benefit of his or her new employer or clients, at the unfair expense of competitors who cannot access this information.
- **Representing Former Interests after Taking Office.** Officials may bring previous loyalties and interests into office, and will support them in a potentially biased way when forming policy, enforcing regulations or awarding contracts. This is particularly problematic if executives are charged with overseeing their former business sector. An official who had worked at a former company a long time may sympathize with the position of the company and its sector, influencing regulatory decisions.
- **Seeking Future Employment in Office.** An official may try to gain favor with a certain company or industry while in office, with the view to securing a lucrative job offer upon leaving public service.
- **Lobbying.** The privileged access to serving officials and the policymaking process that former officials possess is a prized commodity for lobbying firms, and may give these interest groups undue leverage to influence policy making.³ This is less of an issue in Georgia due the currently underdeveloped lobbying industry, but may become problematic if lobbying firms proliferate in the future.

In addition to the direct corruption they represent, these activities have auxiliary negative effects. These include: weak or biased policy formation; the inefficient use of state resources due to a lack of integrity in public contracting; eroding public trust in government; undermining the development of a public service ethos of integrity; and damaging the economy by repelling external investors or by discouraging firms to bid and engage with in processes they believe to be corrupt.

Georgia is a signatory or the UN Convention against Corruption, and is therefore obliged (under article 12) to put in place 'restrictions...for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised during their tenure

³ Vidal et. Al. 'Revolving Door Lobbyists', <http://cep.lse.ac.uk/pubs/download/dp0993.pdf>

III. Revolving Door in Georgia: Regulations and Practice

General Legal Framework

Georgia's present legislation contains a number of important provisions which could help conflict of interest and other problems linked to revolving door if implemented and monitored properly.

General rules concerning integrity and conflict of interest (including those that are relevant for regulating revolving door) for the members of Georgia's public services are set out in the Law on Public Service⁴ and the Law on Conflict of Interest and Corruption in Public Service.⁵ The former law applies to the majority of public servants, while the latter focuses on higher-level public officials.

The Law on Public Service contains a number of important provisions for the wide category of public servants:

- Requirement to protect state and commercial secrets
- Restriction of entrepreneurial activities (whereby public servants cannot engage in commercial activities and are only allowed to own stocks and shares)
- Restrictions on supervision (whereby public servants cannot receive income from the entities whose operation they supervise in their official capacity and are also prohibited to supervise entities where their family members hold senior positions)
- Post-employment restrictions (whereby, for a period of three years after leaving public service, public servants are prohibited from joining the enterprises whose operation they supervised in their official capacity for the preceding three years)
- Restrictions on contracting (whereby public servants are prohibited to contract, in their official capacity, the enterprises in which they have a stake)⁶

Additionally, the same law has a chapter dedicated to general rules of conduct. These prohibit public servants from obtaining any personal benefits from their positions, require them to disclose and report any instances of conflict of interest, and impose restrictions on gifts.⁷

The Law on Conflict of Interest and Corruption in Public Service (which, as mentioned earlier, applies to higher-level members of the public administration, i.e. 'public officials') establishes some noteworthy rules. These are particularly important since, save for some exceptions, the Law on Public Service does not apply to public officials and any omissions in a law designed specifically for the latter category of public service members would result in major regulatory gaps. The Law on Conflict of Interest and Corruption in Public Service covers, among other things, the following areas:

- Prohibition of misuse of authority

⁴ Law on Public Service, 31 October 1997.

Law on Conflict of Interest and Corruption in Public Service, 17 October 1997.

⁶ Law on Public Service, Articles 59-66.

⁷ Law on Public Service, Articles 73¹-73⁵.

- Prohibition of misuse information obtained in official capacity and the use of such information for private gain
- Requirement of disclosure and recusal when an official has a personal stake in the subject of public decision-making (however, this requirement does not extend to some of the highest-ranking officials, including members of parliament)
- Prohibition of parallel paid work (except for academic or creative work)
- Prohibition for public officials to work for commercial enterprises and for their family members to work in enterprises whose operations the officials in question supervise in their official capacity. Public officials and their family members are also prohibited to hold shares or stock in such enterprises
- Prohibition on public officials' acting as proxies of individuals or companies
- Requirement of asset disclosure: Public officials must file electronic asset declarations (that are available to any interested person) within two months of their appointment and within two months of leaving the office, as well as annually during the period of their service. The law provides detailed instructions concerning the content of asset declarations.⁸

The Public Service Bureau is responsible for collecting the asset declarations and ensuring their public availability.⁹ There is, however, no dedicated mechanism or body for examination and verification of the content of asset declarations, **and it is also not clear who is responsible for monitoring application of the rules listed above.**

Subsequent sections of this report examine actual situation in terms of revolving door in key parts of the public sector, including the legislature, the executive branch, local government bodies, and independent regulatory bodies.

⁸ Law on Conflict of Interest and Corruption in Public Service, Articles 7-9, 11, 13-15.

⁹ Law on Conflict of Interest and Corruption in Public Service, Article 18.

Parliament

A considerable part of Georgian MPs have direct or indirect connections with private companies, some of which have obtained lucrative government contracts and different types of benefits from the state. In the absence of proper regulatory or monitoring mechanisms, these cases threaten to undermine public trust in Parliament.

Law

In addition to the general provisions described in the preceding chapter, the Law on Status of Parliament Member and the Parliamentary Rules of Procedure contain a number of rules for legislators. These essentially mirror and repeat the provisions discussed earlier, instead of providing more detailed regulations. Moreover, there is presently no effective code of ethics for MPs.

The two laws reiterate the prohibition on MPs' involvement in commercial activities except for ownership of stocks and shares.¹⁰ Additionally, the Rules of Procedure require MPs to cease any activities that are not compatible with an MP's status within seven days of joining the legislature and to present the proof of doing so to the Parliamentary Committee on Procedural Issues and Rules.¹¹

The Georgian Parliament presently has no code of ethics. Although a Code of Ethics was signed by MPs in 2004, its content was limited, and its implementation was not properly monitored, and it apparently expired after a new Parliament was elected 2008. TI Georgia has recommended incorporation of a mandatory code of ethics into the Parliamentary Rules of Procedure.¹²

Practice

Political parties have remained weak throughout Georgia's recent history and the country has typically had a situation where a powerful ruling party was confronted by a multitude of small and weak opposition groups. Moreover, Georgia's ruling parties have also traditionally been structurally weak and have relied on their exclusive access to administrative and other types of resources to secure electoral success. This has resulted in an underdeveloped system of political parties¹³ that do not have strong internal systems for selection and promotion of candidates and often turn to people recruited outside the parties during elections. At times, these turn out to be wealthy businessmen who have weak links to the parties in question but can make sizeable contributions to their campaign funds.

According to their asset declarations, 41 of the 147 current members of the Georgian Parliament have connections with private companies either directly or indirectly (through their immediate family).¹⁴ While some of these connections are insignificant, there are also prominent businessmen among the incumbent MPs with connection with large enterprises. These include Davit Bezhuashvili (2 companies), Valeri Gelashvili (3 companies), Gocha Enukidze (37 companies), Gogi Topadze (24 companies), Koba Naqopia (5 companies), and Kakha Okriashvili (13 companies).

¹⁰ The Law on Status of Parliament Member, Article 8; the Parliamentary Rules of Procedure, Article 10.

¹¹ The Parliamentary Rules of Procedure, Article 10.

¹² For a more detailed review of the subject, see *Case Study: the Georgian Parliament's Code of Ethics: Implementation and Recommendations for Reform*, Lasha Gogidze, Transparency International Georgia, 2012, http://transparency.ge/sites/default/files/post_attachments/Georgia%27s%20Parliamentary%20Code%20of%20Ethics%20-%20A%20Need%20For%20Reformation.pdf

¹³ The 2011 National Integrity System Assessment by TI Georgia identified political party's as one of Georgia's weakest institutions, <http://transparency.ge/nis/2011/political-parties>

¹⁴ TI Georgia reviewed the asset declarations of all incumbent MPs through the www.declaration.ge website in March and April 2013.

Gelashvili and Topadze are part of the ruling Georgian Dream coalition but Bezhuashvili, Enukidze, Naqopia, and Okriashvili were reelected to Parliament in October 2012 as members of the United National Movement which had been Georgia's ruling party since 2004 but was voted out of power last year. Okriashvili and Enukidze left the UNM shortly after the elections and recent media reports suggest that Bezhuashvili and Naqopia could follow them before the end of 2013.¹⁵ If they do, it would reinforce the perception that influential businessmen who opt to run for office have weak links to political parties, engage in politics with the purpose of promoting specific business interests, and are only willing to remain affiliated with a particular political party as long as it retains power. It is also noteworthy that the media reports concerning Naqopia's intention to leave the UNM parliamentary group coincided with the new government's decision to revoke the Saqdrisi gold mine's status of cultural heritage monument, allowing a company connected with Naqopia to commence extraction work there.¹⁶

While the current Parliament has worked for less than a year, there is extensive evidence of problems related to revolving door and conflict of interest from the previous legislature. These problems have taken the shape of large government contracts awarded to companies owned by MPs or their family members, as well as the failure of some MPs to report and disclose their business interests. In some cases, law enforcement agencies failed to adequately investigate the violations allegedly committed by private companies in which MPs had stakes. There is also at least one case where a law appears to have been changed in order to benefit companies connected to an MP. **This has fuelled allegations and suspicions that MPs have lobbied their preexisting business interests after joining the legislature, and has undermined the public trust in Parliament.** In the Global Corruption Barometer survey conducted in Georgia in September 2012, **respondents identified Parliament as the country's third most corrupt institution** (after judiciary and media).¹⁷

Companies Affiliated With MPs Awarded Government Contracts and Preferential Treatment

A number of companies affiliated with Georgian MPs have received large government contracts. Some of these contracts have been awarded without open tenders and competitive bidding.

Kandid Kvitsiani was elected to Parliament in 2008. According to the first asset declaration that he filed after assuming the office (in 2009), he had a stake in several companies, including Enguri 2006 Ltd. Enguri 2006 was the only company that appeared in his next asset declaration in 2010 and he did not report involvement in any companies either in 2011 or 2012.¹⁸ However, according to the Georgian company registry records¹⁹, Kvitsiani retained a 50-percent stake in Enguri 2006 until the spring 2013 (meaning that he violated the law by failing to report his involvement in a business entity). In 2012 alone, Enguri 2006 received GEL 31.8 million in government contracts awarded through "simplified procurement" procedure.²⁰ Additionally, the company won public tenders worth GEL 18.6 million in

¹⁵ "Bezhuashvili and Naqopia Could Leave Minority", Teona Manadze, 1 August 2013, (in Georgian) http://www.for.ge/view.php?for_id=25583&cat=2

¹⁶ "Ministry of Culture's 'Golden Section' Against the Background of Conflict of Interest", Mikheil Meparishvili, 7 August 2013, (in Georgian), <http://www.netgazeti.ge/GE/105/culture/22395/>

¹⁷ Transparency International Georgia, "Transparency International: Georgians Perceive Judiciary, Media and Parliament as the Most Corrupt Institutions," 9 July 2013, <http://transparency.ge/en/corruptionbarometer2013>

¹⁸ Kandid Kvitsiani's asset declarations for 2009-2012: <https://declaration.gov.ge/declarations/saqartvelos%20parlament/Kviciani%20Kandid%202009.pdf>, <https://declaration.gov.ge/declaration.php?id=138>, <https://declaration.gov.ge/declaration.php?id=4572>, <https://declaration.gov.ge/declaration.php?id=7034>

¹⁹ Ltd Enguri 2006, a record from the registry of commercial and non-commercial legal entities, https://enreg.reestri.gov.ge/main.php?c=mortgage&m=get_output_by_id&scandoc_id=515325&app_id=592585

²⁰ TI Georgia's own calculations based on data from <https://tenders.procurement.gov.ge>

2011-2012.²¹ Previously, Enguri 2006 had also received government funds on non-competitive basis. For example, it was paid GEL 8.4 million in 2010 for the construction of an airport in Svaneti.²² Along with government contracts, Kvitsiani's businesses appear to have received favorable treatment from the authorities in their disputes over land ownership with local residents in Mestia District (where Kvitsiani himself was elected). A hotel run by Kvitsiani's son was built on the disputed land after it was seized from the locals and Kvitsiani's company was subsequently awarded a government contract of GEL 6.3 million to build a road to the hotel.²³

Temur Kokhodze was a member of Parliament in 2008-2012. According to his most recent asset declaration, he was the owner or co-owner of 10 different companies, including the Tegeta group of companies.²⁴ Tegeta was a major donor to the United National Movement's election campaigns, as well as a major recipient of government contracts. For example, the company donated GEL 500,000 to the UNM's campaign for the 2010 local elections²⁵ (the last elections conducted before the ban on corporate donations in 2011) and received over GEL 3 million through simplified (i.e. noncompetitive) public procurement in 2012.²⁶ Kokhodze is also the owner of the Sairme Development Company Ltd. In 2011, the company acquired the ownership of a number of land plots in the resort town of Sairme which the local residents had earlier handed over to the state without any compensation. The people in question told TI Georgia that they had been pressured into giving up the ownership of the land by the local Prosecutor's Office.²⁷

Gocha Enukidze was a member of the United National Movement's parliamentary majority in 2008-2012. He has a stake in more companies than any other member of the legislature (37 according to his most recent asset declaration).²⁸ Some of Enukidze's companies have been major recipients of government money in recent years. These include Iberia Auto, Iberia Service, Iberia Auto Land, Iberia Motors, Kia Motors Georgia, Iberia Autohouse, and Iberia Tech AutoMotive. Companies connected to Enukidze received at least GEL 16.3 million through government tenders in 2010-2013 and at least GEL 6.6 million through simplified (i.e. noncompetitive) procurement in 2012-2013 alone. Enukidze was, again, elected to Parliament in 2012 but the UNM lost the election and Enukidze left the party shortly afterwards.²⁹

Archil Gegenava was elected to Parliament in 2008. At the time, he was a prominent businessman with stakes in over two dozen companies. Among these were Megafood and Foodservice,³⁰ although he

²¹ TI Georgia's own calculations based on data from <https://tenders.procurement.gov.ge>

²² Global Integrity, Nana Naskidashvili, *Global Integrity Report, Georgia Notebook 2011, David vs Goliath or Traditional Land Rules vs. Political Influence*, <http://www.globalintegrity.org/report/Georgia/2011/notebook>

²³ Global Integrity, Nana Naskidashvili, *Global Integrity Report, Georgia Notebook 2011, David vs Goliath or Traditional Land Rules vs. Political Influence*

²⁴ Temur Kokhodze's asset declaration for 2012, <https://declaration.gov.ge/declaration.php?id=7086>

²⁵ Transparency International Georgia, *Political Party Finance Report, 2011*, <http://transparency.ge/post/press-release/%E2%80%9Esaertashoriso-gamchvirvaloba-%E2%80%93-sakartvelo%E2%80%9C-politikuri-partiebis-dapinansebis-kvl>

²⁶ TI Georgia's own calculations based on data from tenders.procurement.gov.ge

²⁷ Transparency International Georgia, "Property Seizure by Prosecutor's Office in Sairme", 31 October 2012, <http://transparency.ge/en/blog/property-seizure-prosecutor-s-office-sairme>

²⁸ Gocha Enukidze's asset declaration for 2013, <https://declaration.gov.ge/declaration.php?id=46001>

²⁹ Netgazeti, "Ambrolauri MP Has Left National Movement Faction", 21 December 2012, (in Georgian), <http://www.netgazeti.ge/GE/105/News/15640/>

³⁰ Archil Gegenava's asset declaration for 2009, <https://declaration.gov.ge/declarations/saqartvelos%20parlamenti/Gegenava%20Archil%202009.pdf>

handed over his shares in both companies to his brother Andro Gegenava after joining the legislature.³¹ Over the next few years, the two companies received large contracts for supplying different government agencies with food. Since 2011, Megafood and Foodservice received over GEL 9 million through open tenders alone³² and they were also reportedly contacted by the Ministry of Defense to provide food for the Armed Forces without an open tender. According to some sources, Megafood had an “effective monopoly” over the supply of food to the Armed Forces until the change in the Defense Ministry leadership in 2011.³³ In 2011, another company where Gegenava was among the beneficial owners obtained a land plot in one of Tbilisi’s largest public parks which the city authorities had inexplicably decided to sell after revoking the land’s status of a protected area, which prevented its sale and the construction of a restaurant there.³⁴

Companies Affiliated With MPs Receiving Favorable Treatment From Law Enforcers

Some companies with connections to influential MPs appear to have received favorable treatment from the law enforcement agencies as their alleged wrongdoings were not fully investigated.

Davit Bezhuashvili has been a member of Parliament since 1999, while also controlling a number of important assets in Georgia through his ownership of Chemexim International Ltd, a company registered in the Marshall Islands. Bezhuashvili’s main Georgian-based business is the Georgian Industrial Group (GIG). GIG is the sole owner of Saknakshiri, a company that operates a coal mine in the town of Tqibuli. A series of explosions occurred in the Tqibuli mine in 2010-2011, resulting in nine deaths.³⁵ After the January 2011 explosion which left two people dead and four seriously injured, President Mikheil Saakashvili criticized the law enforcers for their failure to properly investigate previous accidents and even suggested that prosecutors may have covered up the management’s guilt in return for a bribe.³⁶ Although the president promised comprehensive investigation, only the immediate supervisors of the deceased miners were subsequently arrested and charged,³⁷ despite the allegations by the labor unions that the owners of the mine had been warned about the imminent disaster and had forced miners to work in dangerous conditions, threatening to dismiss them if they would refuse.³⁸

Rusudan Kervalishvili was a member and deputy speaker of Parliament between 2008 and 2012. At the time of assuming the office Kervalishvili was already a co-owner of Center Point, one of Georgia’s largest

³¹ Ltd Megapudi, a record from the registry of commercial and non-commercial legal entities, https://enreg.reestri.gov.ge/main.php?state=search_by_name&value=%E1%83%9B%E1%83%94%E1%83%92%E1%83%90%E1%83%A4%E1%83%A3%E1%83%93%E1%83%98

³² TI Georgia’s calculations based on data from <https://tenders.procurement.gov.ge>

³³ Pirweli, "Like Defense Ministry, Ministry of Corrections Could Also Sever Contract With Archil Gegenava's Company", 2 September 2011, http://www.pirweli.com.ge/old/index.php?option=com_content&task=view&id=76858&Itemid=52

³⁴ Transparency International Georgia, "From Public to a Politician's Property: The Story of a Land Plot Near Turtle Lake", 1 August 2013, <http://transparency.ge/en/blog/public-politician-s-property-story-land-plot-near-turtle-lake>

³⁵ Aleksa Bezhanishvili, "Mikheil Saakashvili: Prosecutor Proved by Investigation That Explosion in Tkibuli Mine Resulted From Illegal Activities of Administration", 24 January 2011, <http://www.humanrights.ge/index.php?a=main&pid=12837&lang=geo>

³⁶ Civil Georgia, "Saakashvili Demands Punishment of Culprits in Tqibuli Mine Explosion", 22 January 2011, (in Georgian), <http://civil.ge/geo/article.php?id=23588>

³⁷ Tabula, "Two People Arrested Over Tqibuli Mine Explosion," 21 January 2011, (in Georgian), <http://www.tabula.ge/ge/story/53642-tkibulis-magharoshi-momxdar-afetqebastan-dakavshirebit-ori-adamiani-daakaves>

³⁸ Aleksa Bezhanishvili, "Mikheil Saakashvili: Prosecutor Proved by Investigation That Explosion in Tkibuli Mine Resulted From Illegal Activities of Administration", 24 January 2011, <http://www.humanrights.ge/index.php?a=main&pid=12837&lang=geo>

construction companies.³⁹ During her time in office, the Prosecutor's Office failed to properly investigate Center Point's alleged embezzlement of investor funds through a Ponzi scheme, despite the fact that there was strong evidence of the company's illegal activities and some 30,000 people had been affected. Dozens of letters sent by Center Point's investors to different government bodies remained unanswered and the law enforcers showed no interest in investigating the case, while the Prosecutor's Office brought criminal charges against the owner of another construction company for similar actions during the same period of time.⁴⁰ Charges against Kervalishvili were only brought in July 2013, after her party was voted out of power in the October 2012 elections.⁴¹

Legislative Amendments Tailored for Specific Companies

In at least one case, the Georgian Parliament passed a law that appeared to serve the interests of a company connected to an MP.

Koba Naqopia was elected to Georgian Parliament in 2008. Prior to becoming an MP, Naqopia had served as director in *Madneuli* and *Kvartsiti*, two companies operating gold and copper mines in Bolnisi District. Naqopia told the *Liberali* magazine in November 2012 that he was still a "partner" of the current management of these enterprises, noting that he had entrusted his son with managing his stakes in the companies.⁴² Naqopia's official asset declarations contain no reference to any shares in either company, although, according to the same declarations, his son Nikoloz Naqopia worked as a consultant in *Kvartsiti* in 2009-2012 and earned over GEL 11 million from the company during this period of time.⁴³

In March 2012, the Georgian Parliament adopted a law whereby any company that had committed violations in the field of environment protection and use of natural resources could avoid legal sanctions by applying to the Ministry of Energy and Natural Resources, signing an agreement, and undertaking to pay the state compensation whose size was to be determined through negotiations between the ministry and the company. Upon the conclusion of the agreement, all actions carried out by the company during the period of time covered by the agreement would be considered legal (even if they violated existing laws and regulations). Any such agreement was subject to approval by the prime minister, while the Ministry of Environment was completely excluded from the process.⁴⁴ An expert from a leading Georgian environmental NGO told TI Georgia that the law was most likely tailored to suite the interests of *Madneuli* and *Kvartsiti*.⁴⁵ Only three agreements of this type were signed before the law was revoked in early 2013. While two of the three agreements involved relatively small amounts of money (GEL 20,000 and 40,000 respectively), the only major agreement was signed with *Kvartsiti* and *Madneuli* and the companies undertook to pay the state GEL 13 million. The negotiating process

³⁹ Rusudan Kervalishvili's asset declaration for 2009, <https://declaration.gov.ge/declarations/saqartvelos%20parlamenti/Kervalishvili%20Rusudan%202009.pdf>

⁴⁰ Transparency International Georgia, *Center Point Group -- Georgia's Biggest Construction Scandal*, December 2012, 5-6, 20-22.

⁴¹ Netgazeti, "Charges Brought Against Rusudan Kervalishvili and Maia Rcheulishvili", 11 July 2013, (in Georgian) <http://netgazeti.ge/GE/105/News/21527/>

⁴² Liberali, Tsira Gvasalia, "Madneuli: Cheap Treasure", 22 November 2012, <http://www.liberali.ge/ge/liberali/articles/113284/>

⁴³ Koba Naqopia's asset declarations for 2009-2012, www.declaration.ge

⁴⁴ Green Alternative, *Secretly Concluded Agreements Against the Environment*, February 2013, http://greenalt.org/wp-content/uploads/2013/03/garemos_winaagmdeg_dadebuli_shetanxmebebi_REPORT_2013.pdf

⁴⁵ Interview with Irakli Macharashvili and Ketij Gujaraidze, Green Alternative, 26 June 2013.

(starting with the sending of the proposal to the government by the two companies and ending with the signing of the agreement) **took a mere two days** and the government did not conduct any assessment of the actual damages caused by the illegal activities that the companies may have engaged in during the 18-year period covered by the agreement.⁴⁶ Interestingly, both companies were sold to a new owner shortly after the signing of the agreement. According to TI Georgia's interviewees, the entire process (including the passing of legislation in Parliament) probably aimed to rendering *Madneuli* and *Kvartsiti* more attractive for potential investors.⁴⁷

⁴⁶ Green Alternative, *Secretly Concluded Agreements Against the Environment*.

⁴⁷ Green Alternative, *Secretly Concluded Agreements Against the Environment*.

Executive Branch

Revolving door is a significant issue in the Georgian executive branch. There has been extensive movement between the government branch and the private sector in recent years. The majority of Georgian prime ministers have had significant business connections, while a number of ministers turned into wealthy and influential businessmen shortly after leaving the office. Additionally, a number of officials who are in charge of overseeing specific sector of economy have had considerable private commercial interests in those same sectors, while some former members of the executive branch have moved to the sectors that they previously supervised in their official capacity.

Regulations

The requirements and restrictions described in the section on general legal framework apply to high-level members of the executive branch. Additionally, the Law on Structure, Authority, and Operation Rule of Georgian Government, prohibits deputy ministers from engaging in commercial activities.⁴⁸ As in Parliament's case, the law mirrors and repeats the provisions from the laws that have a wider scope and cover the entire public sector, instead of establishing more detailed provisions tailored to the specifics of particular offices. There are no further regulations, such as a code of ethics.

Practice

The past decade has seen frequent movement of people from business to senior positions in Georgia's executive branch and back. Some of these movements have raised more questions than others but the general trend itself points to the degree to which revolving door is an issue in the Georgian government.

Prime Ministers Going Through Revolving Door

Four of Georgia's seven prime ministers (since the establishment of this post in 2004) either came to government from business or joined the private sector immediately after the leaving the office (or both).

Zurab Noghaideli moved between Parliament, government and the private sector before becoming Georgia's prime minister in early 2005. He left the office in November 2007 and filed his last asset declaration five months later, in April 2008. According to this declaration, Noghaideli was chairman of board in six different companies none of which had appeared in his last asset declaration filed a year earlier: Noghaideli Consulting, Kala Capital Ltd, JSC Kala Development, Kala Energy, Arsenal Development Ltd, and JSC Progress Bank.⁴⁹ Four of these companies were established after Noghaideli's resignation from the government, while the other two were established shortly before that. Since 2008, Noghaideli has been a business associate of Kakha Kaladze, who became minister of energy after the October 2012 parliamentary elections.

Noghaideli was succeeded as prime minister in November 2007 by Lado Gurgenidze, who had, until then, served as chairman of board in Bank of Georgia, one of the country's largest banks. Gurgenidze resigned from the government a year later and soon returned to the banking sector, becoming co-owner and general director of another of Georgia's large banks: The People's Bank which he rebranded into Liberty Bank.

Nika Gilauri was appointed Georgian prime minister in 2009 and remained in the office until June 2012. Two months after leaving the government, on 6 September 2012, the former prime minister established

⁴⁸ The Law on Structure, Authority, and Operation Rule of Georgian Government, 11 February 2004, Article 23.

⁴⁹ Zurab Noghaideli's asset declaration for 2008, <http://declaration.ge/csb/downloadervlet?declarationId=21508>

Gilauri and Company Ltd where he was both director and the sole partner.⁵⁰ On 11 September, Caucasus Energy Company Ltd was established, an entity fully owned by Gilauri and Company.⁵¹ On 3 October, the outgoing Government of Georgia signed a memorandum of understanding with Caucasus Energy Company Ltd (a company that had only been established three weeks earlier), although the memorandum was later annulled by the new government on 19 November.⁵² Notably, Gilauri had worked for companies operating in the Georgian energy sector prior to joining the government as the minister of energy in 2004.⁵³

Georgia's 7th Prime Minister Bidzina Ivanishvili is presently #229 on the Forbes list of billionaires and is reportedly worth over \$5 billion.⁵⁴ According to his asset declaration, Ivanishvili is presently (directly or indirectly) involved in three companies: Ivanishvili himself is a stockholder in JSC Progressbank, while his wife Ekaterina Khvedelidze is a partner in Aktsepti Ltd (the company that owns the Channel 9 TV station) and his son Bera Ivanishvili is a partner in the GDS entertainment TV channel. Ivanishvili has also reported ownership of stocks, bonds, and securities abroad.⁵⁵ However, since Georgian officials are not presently required to disclose beneficial ownership of companies, it is difficult to obtain comprehensive information regarding Ivanishvili's connections to different businesses, including those operating in Georgia. For example, Ivanishvili's asset declaration contains no reference to his involvement in Kartu Group which he has long been associated with.

Irakli Gharibashvili, who replaced Ivanishvili as the prime minister, previously also worked in Kartu Group.

Quick Success of Former Cabinet Members in Private Sector

A number of ministers and deputy ministers have also moved between the public and the private sectors. Some of these acquired sizeable assets in the private sector in a suspiciously short period of time after leaving public service and benefited from various contacts, licenses, exclusive rights or tax breaks granted by the government.

Davit Kezerashvili was Georgia's defense minister in 2006-2008, having earlier served as the chief of financial police. According to his 2008 asset declaration⁵⁶, Kezerashvili did not possess any significant wealth or assets. However, over the next couple of years, he assumed direct or indirect control of leading companies operating in a number of different markets. Specifically, Kezerashvili was involved in two of the five large companies that dominate retail sale of gasoline in Georgia: Unigroup (which provided distribution services for Lukoil Georgia)⁵⁷ and Gulf.⁵⁸ The two companies received at least GEL

⁵⁰ A record from the registry of commercial and non-commercial legal entities, https://enreg.reestri.gov.ge/main.php?c=mortgage&m=get_output_by_id&scandoc_id=454340&app_id=528781

⁵¹ A record from the registry of commercial and non-commercial legal entities, https://enreg.reestri.gov.ge/main.php?c=mortgage&m=get_output_by_id&scandoc_id=455365&app_id=529879

⁵² Order of the Georgian Government #1940, 19 November 2012, http://www.government.gov.ge/index.php?lang_id=E&sec_id=252&info_id=35141

⁵³ Nika Gilauri, the Government of Georgia, http://www.government.gov.ge/index.php?lang_id=E&sec_id=262

⁵⁴ Bidzina Ivanishvili, The World's Billionaires, Forbes.com, <http://www.forbes.com/profile/bidzina-ivanishvili/>

⁵⁵ Bidzina Ivanishvili's asset declaration for 2012, <https://declaration.gov.ge/declaration.php?id=44171>

⁵⁶ Davit Kezerashvili's asset declaration for 2008, <https://declaration.gov.ge/declarations/saqartvelos%20tavidacvis%20saministro/Kezerashvili%20Davit%202008.pdf>

⁵⁷ Ltd Unigroup, a record from the registry of commercial and non-commercial legal entities https://enreg.reestri.gov.ge/main.php?c=mortgage&m=get_output_by_id&scandoc_id=385642&app_id=446551

230 million through government contracts (including at least GEL 86 through noncompetitive procurement) between 2010 and 2012.⁵⁹ A 2011 report by Transparency International Georgia concluded that Kezerashvili exercised effective control over Georgia's entire market of television advertising through a network of interconnected companies.⁶⁰ Companies connected with Kezerashvili were also awarded exclusive rights for outdoor advertising in Tbilisi⁶¹ and an exclusive license for national lottery.⁶² Kezerashvili left Georgia after the United National Movement was voted out of power in October 2012 and has since sold many of his assets in the country. He is currently wanted by the Georgian authorities on corruption-related charges.⁶³

Giorgi Arveladze served as minister of economic development and head of the president's administration before leaving the government in 2007. After moving to the private sector, Arveladze became general director and shareholder of Imedi, one of Georgia's three main TV stations.⁶⁴ Under Arveladze, Imedi became prominent for a strong pro-government bias in its news programs and had large tax debt written off by the authorities in 2010 and 2012. Although the government claimed on both occasions that the tax amnesty aimed to promote sustainability of smaller TV stations based outside the capital, Imedi ended up accounting for a lion's share of the tax debt written off along with Rustavi-2, another TV station closely affiliated with the government.⁶⁵ Arveladze gave up Imedi for a token price immediately after the change of government in October 2012.⁶⁶

Kakhaber Damenia left the Georgian Government in 2008 after serving as deputy minister for economic development for a number of years. Shortly after his resignation, he established *Gutidze Damenia Chantladze Solutions*, a private consultancy and lobbying firm, together with former Environment Minister Davit Chantladze. The firm was subsequently contracted by the state-owned Georgian Railways to produce an impact assessment document for the planned diversion of a railway line in Tbilisi.⁶⁷ In the summer 2013, the new management of Georgian Railways announced plans to cancel the construction and published an alternative assessment by an Austrian firm that questioned the cost-effectiveness of the project.⁶⁸ Earlier in 2013, Damenia was formally charged with involvement in bribery and money laundering as the Prosecutor's Office accused him of serving as a mediator between Finance Minister

⁵⁸ Netgazeti, Nino Natroshvili, "Kezerashvili: I Am Co-Owner of the Gulf Company", 19 December 2011, (in Georgian), <http://netgazeti.ge/GE/85/business/7498/.htm>

⁵⁹ TI Georgia's own calculation. Source: <https://tenders.procurement.gov.ge>

⁶⁰ Transparency International Georgia, *The Georgian Advertising Market*, Tbilisi, December 2011, 5.

⁶¹ Transparency International Georgia, *The Georgian Advertising Market*, Tbilisi, December 2011, 27.

⁶² Mathias Huter and Mamuka Andguladze, Transparency International Georgia, "Lottery Nationalized and Put Under Management of Georgian Post", <http://transparency.ge/en/blog/lottery-nationalized-and-put-under-management-georgian-post>

⁶³ Civil Georgia, "Former Defense Minister Kezerashvili Charged With Corruption", 31 January 2013, (in Georgian) <http://civil.ge/geo/article.php?id=26498>

⁶⁴ Arveladze held the largest share in Georgian Media Productions Group Ltd which, in turn, held a 100-percent share in Imedi, https://enreg.reestri.gov.ge/main.php?c=mortgage&m=get_output_by_id&scandoc_id=385952&app_id=446192

⁶⁵ Civil Georgia, "Finance Ministry Offering TV Stations To Reduce Tax Debt", 15 October 2012, (in Georgian), <http://civil.ge/geo/article.php?id=26103>

⁶⁶ Civil Georgia, "Imedi TV Station Handed Over to Patarkatsishvili's Family for 3 Lari", 20 October 2012, (in Georgian), <http://civil.ge/geo/article.php?id=26125>

⁶⁷ http://aarhus.ge/uploaded_files/bfcfb57238c4305419c8ee123c34b3241615b1d83744ab3275625cfbf8c11b68.pdf

⁶⁸ Nino Natroshvili, Netgazeti, "Why Is Tbilisi Bypass Railroad Project About To Change", 17 June 2013, <http://netgazeti.ge/GE/105/business/20739/>

Aleksandre Khetaguri and the Telasi power company in a tax evasion scheme,⁶⁹ although he was later acquitted in court.⁷⁰

Zviad Cheishvili worked in the Georgian Government as deputy minister for economic development, as well as head of the Forestry Department. In both capacities, he coordinated awarding of logging licenses to private companies. Immediately after leaving the government, Cheishvili joined *Georgian Wood and Industrial Development*, a private Georgian-Chinese company which was the largest recipient of logging licenses during Cheishvili's time in the government. Cheishvili was able to benefit from an apparent loophole in the law, stating that he had only supervised logging licenses for two and a half years, while the existing legal restrictions only applied to public officials who had supervised a certain area of economic activity for a period of at least three years.⁷¹ Nevertheless, the fact that, immediately after leaving the government, Cheishvili was hired by a company that was a major beneficiary of his decisions as a public official raised some legitimate suspicion among environmental watchdogs.

Notable Cases in New Government

In the government that was formed after the October 2012 parliamentary elections, 19 of the 69 ministers and deputy ministers have reported direct or indirect⁷² connections with business in their asset declarations. Some of these cases merit particular attention due to a relatively high risk of conflict of interest.

Prime Minister Ivanishvili nominated Kakha Kaladze, a prominent member of his Georgian Dream coalition, as the new minister of energy and natural resources shortly after the parliamentary elections. Prior to this nomination, Kaladze had a direct or indirect stake in at least three companies operating in the energy sector (Kala Energy and Natural Resources, SakHidroEnergoMsheni, TOT Energy),⁷³ meaning that he had commercial interests in the field that he was expected to oversee in his public office. Kaladze formally gave up control of these assets after joining the government, although it is impossible to rule out the possibility that he retains indirect private interests in the sector (since Georgian officials are not required to disclose beneficial ownership of companies). While Kaladze's coalition had endorsed environmental concerns over the preceding government's extensive construction of hydroelectric power plants during the election campaign, he made a complete U-turn on the issue after assuming office and confronted the Ministry of Environment and environmental CSOs over their objections to some of the existing projects.⁷⁴ It is noteworthy that Deputy Energy Minister Mariam Valishvili has also served as director at TOT Energy (one of the companies where Kaladze had a stake) despite serving as deputy minister of energy since 2008.⁷⁵ Valishvili previously worked in another of Kaladze's companies, Kala Energy and Natural Resources.⁷⁶

⁶⁹ Civil Georgia, "Khetaguri and Gvaramia Facing Charges", 22 December 2012, (in Georgian), <http://www.civil.ge/geo/article.php?id=26370>

⁷⁰ Nata Dzvelishvili, "Nika Gvaramia Acquitted by Court", 14 November 2013, (in Georgian), <http://www.media.ge/ge/portal/news/301735/>

⁷¹ Eka Basilaia, Rezonansi, "Forests for Economic Development", 31 July 2010, (in Georgian), http://www.resonancedaily.com/index.php?id_rub=2&id_artc=3158

⁷² Connections through family members.

⁷³ Transparency International Georgia, *Possible Conflict of Interest of Kakha Kaladze*, <http://transparency.ge/en/post/general-announcement/possible-conflict-interests-kakha-kaladze>

⁷⁴ Interview with Irakli Macharashvili and Ketij Gujaraidze, Green Alternative, 26 June 2013.

⁷⁵ A September 2011 record from the public registry of companies lists Valishvili as TOT Energy's director: https://enreg.reestri.gov.ge/main.php?c=mortgage&m=get_output_by_id&scandoc_id=315842&app_id=362816

⁷⁶ Mariam Valishvili, the Ministry of Energy, <http://www.minenergy.gov.ge/4431>

The situation at the Ministry of Energy is thus worrisome and, absent proper regulation and monitoring, could potentially result in the capture of public authority by private interests.

A number of officials who assumed office after the October 2012 elections previously worked at companies associated with the prime minister's Kartu Group. These include Internal Affairs Minister (and subsequently Prime Minister) Irakli Gharibashvili, Economic Development Minister Giorgi Kvirikashvili, Deputy Economic Development Minister Dimitri Kumsishvili, and Ajarian Government Chairman Archil Khabadze. A simultaneous accession to high-level public offices of a group of individuals from a single business group is potentially problematic and, absent sufficient transparency and accountability mechanisms, could eventually produce real or perceived conflict of interest (the latter also being a serious problem due to its potential to undermine public trust in the government).

Local Government

At the local government level, conflict of interest provisions (including those concerning revolving door) are either missing altogether or are weak and limited in scope, and a significant number of local government members are free to engage in business. This creates significant risk of abuse, particularly in case of the local government members who are involved in making important decisions (including those concerning the spending of public funds) but are essentially exempt from important accountability mechanisms. In practice, companies connected with local government members have benefited from dealing with the local authorities both during and after their time in the public sector.

Regulations

As mentioned earlier, the *Law on Public Service* does state that public servants are prohibited (for a period of three years after leaving public service) to join the enterprises whose activities they “systematically supervised” for the preceding three years.⁷⁷ However, the current wording of the law suggests that this restriction only applies to the employees of central government bodies and not to those from local government.

Moreover, under the *Law on Conflict of Interest and Corruption in Public Service*, only a limited number of local government members have the status of public officials, while the rest are exempt from the transparency and accountability requirements that public officials are expected to meet (most importantly, the requirement to publicly disclose their assets). Presently, the law only applies to the top officials of local government bodies, such as city mayors and deputy mayors, district administration heads and their deputies, local council chairs and their deputies, as well as council secretaries and heads of council commissions. Aside from the rest of local councilors, the regulations therefore also exclude heads of municipal services, who perform important public roles and make decisions concerning the spending of large amounts of public funds (especially in cities).

The *Law on Local Government* does not impose any restrictions on the involvement of local council members (except for the chair, deputy chair, committee chairs, and faction chairs) in business either during or after their term, other than prohibiting them from using their powers for personal benefit and requiring them to abstain from voting whenever they have a personal stake in the matter discussed by the council.⁷⁸ **It is, however, not clear how these restrictions can be enforced since council members are not required to publicly disclose their assets or business interests.**

Practice

Two cases presented below highlight the problems that the gaps in law described above are producing in practice. While the existing information is not sufficient to make definitely conclusions regarding possible corrupt practices, they do raise valid suspicions that local government members could be using their office to promote their pre-existing businesses or using their connections to obtain advantages for their companies after leaving public office.

In 2011, the Tbilisi City Hall granted private company *Geo Gold* management rights over one of the city’s public parks for a period of 49 years, in return for the company’s commitment to invest \$1 million in the park. The city authorities contracted *Geo Gold* **without a competitive selection process** and subsequent

⁷⁷ Law on Public Service, Article 65

⁷⁸ Law on Local Government, Article 32³

media reports revealed that the **company was owned by City Council member** Aleksandre Nikolaishvili. The City Hall refused to publicize the contract it had signed with *Geo Gold* on the grounds of it containing commercial secrets. According to a media report, the City Hall decided to contract Geo Gold directly (rather than announce a competition for the management of the park), despite the company's lack of any previous experience in this field.⁷⁹ While it is difficult to prove that Nikolaishvili used his influence as a City Council member to secure the contract for his pre-existing company, the lack of transparency and of any kind of competitiveness in the process did raise serious doubts and is likely to have undermined public confidence in the integrity of city authorities. It is also worth noting that, as a council member, Aleksandre Nikolaishvili **was not required to disclose his ownership** of *Geo Gold* and the information only became public through journalists' efforts.

Another case of notice involves Lasha Purtskhvanidze, former deputy mayor of Tbilisi and head of the city's Old Tbilisi District Administration. After resigning from the City Hall in 2009, Purtskhvanidze and his former deputy Koba Kharshiladze each acquired a 50 percent share in Greenservice Ltd at a token price of 200 lari in November 2010. By then, Greenservice was already a major recipient of public funds through procurement and had been contracted by the City Hall to implement a number of projects in the city (including those implemented during Purtskhvanidze's and Kharshiladze's time in the office). Allegations were made that Purtskhvanidze was the beneficial owner of the company while holding office in the City Hall.⁸⁰ After the formal acquisition by two former City Hall officials, Greenservice continued to win public tenders and received some at least GEL 4 million in government contracts in 2010-2012. In April 2012, TI Georgia reported that the City Hall had purchased trees from Greenservice at a suspiciously high price.⁸¹ When the story was picked up by the media, the city mayor called a press conference, accused Greenservice of cheating, and announced that the City Hall would cancel all of its contracts with the company.⁸² While the city authorities did, indeed, stop working with Greenservice, they continued to contract Greenservice Plus, a company which is also owned by Purtskhvanidze and Kharshiladze, has the same legal address as Greenservice, and received over GEL 0.5 million from the City Hall in the first three months of 2013 alone.

While only a formal investigation can prove that Purtskhvanidze and Kharshiladze used their connections in the City Hall to secure contracts for their company after resigning from public service (or that they indirectly owned the company which the City Hall contracted while they still held offices there), there are strong indications that this may, in fact, have been the case. The token price at which the two former officials acquired the company after leaving the City Hall raises valid suspicions that they may have been its real owners prior to the formal takeover. Subsequently, the terms of some of the City Hall's tenders (most notably, the one involving overpriced trees) appeared to have been tailored to suit Greenservice and to exclude all other possible contenders from the bidding process. Finally, despite the city mayor's statement that the City Hall would no longer work with Greenservice and the case materials would be forwarded to the law enforcement agencies, no meaningful investigation was ever conducted, none of the city officials responsible for conducting the tenders were dismissed, while Purtskhvanidze and Kharshiladze continued to receive the city's contracts through Greenservice Plus.

⁷⁹ Guria News, "Suspicious Circumstances of 49-Year Lease of Mushtaidi Park", 16 January 2013, (in Georgian) <http://www.gurianews.com/home/2010-11-25-16-58-05/7533---49-----html>

⁸⁰ Nino Kakhashvili, Netgazeti, "Did Tbilisi City Hall Contract Its Own Companies", 22 November 2011, (in Georgian), <http://netgazeti.ge/GE/80/business/7047/>

⁸¹ Transparency International Georgia, "Expensive Trees for Baratashvili Street", 24 April 2011, <http://transparency.ge/en/blog/expensive-trees-baratashvili-street>

⁸² GHN, "Tbilisi City Hall Has Cancelled Contract With Greenservice Company", 9 May 2012, (in Georgian), <http://ghn.ge/news-66141.html>

The fact that the majority of local council members are free to engage in parallel business activities has had a significant impact on the composition and work of the councils. **Many council members elected after the introduction of this legislation had loose ties with the parties on whose ticket they ran for office but retained strong connections to private companies.** This could partially explain, for example, why the United National Movement's majority in the Tbilisi City Council (and many municipal councils throughout the country) collapsed after the party lost power at the central level in October 2012. In Georgia, where good relations with the government are still often considered a necessary condition for successful business, politicians who retain business interests are likely to be unwilling to stay with a party once it moves from government to opposition. In this respect, the changes that occurred in local councils mirror the decision of some MPs to leave the UNM after its defeat in the last parliamentary election. However, the process occurred on a grander scale in the local councils since a larger part of their members was directly involved in business (as a result of the more liberal regulations compared to parliament).

Independent Regulators

The legal provisions designed to address conflict of interest and revolving door situations for the members of Georgia's independent regulatory bodies are incomplete. Moreover, examples from recent practice also suggest that even the application of the existing legal provisions is not properly monitored.

Regulations

It is particularly important to have robust conflict of interest and revolving door rules in place for independent regulatory bodies, in order to safeguard them against improper influence by the businesses they are expected to supervise and avoid the situation that is usually referred to as “regulatory capture.”

Georgia has some important transparency and accountability mechanisms which, if enforced in practice, could help prevent conflict of interest. However, there are no post-employment/revolving door regulations for the members of independent regulatory bodies.

Georgia presently has two independent regulatory bodies: the Georgian National Communications Commission (GNCC) and the Georgian National Regulatory Commission for Energy and Water Supply. Commissioners are considered public officials under the Law on Conflict of Interest and Corruption in Public Service⁸³ and are therefore required to publicly disclose their assets through electronic asset declarations.⁸⁴ Additionally, under a number of other laws, commissioners, their family members, and members of the commissions' staff are prohibited to have any direct or indirect economic interest in the enterprises that are regulated by these commissions.⁸⁵ However, **it is not clear how the application of this provision can be monitored and enforced in the case of commission staff members in practice, since they are not required to disclose their assets or economic interests under the current law.**

At the same time, the Law on Public Service does not extend either to commissioners or commission staff members and they are therefore **exempt from the post-employment restrictions that are in place for public servants**. Neither are such restrictions established by any of the laws governing the operation on independent regulators.

Practice

The case of Irakli Chikovani, former head of the Georgian National Communications Commission, contains serious indications of conflict of interest and regulatory capture and provides an illustration of practical consequences of the absence of revolving door restrictions and the poor enforcement of the existing laws.

There are a total of 10 members in Georgia's two regulatory commissions presently (five in each). According to a review of their asset declarations conducted by TI Georgia, **four of them have reported various types of connections to the private sector.**

Irakli Chikovani joined the commission straight from the communications sector as he was general director and co-owner of Rustavi-2, one of the country's leading TV stations, before assuming the position of the GNCC chairman. After joining the commission, he retained shares in Media House, one of

⁸³ The Law on Conflict of Interest and Corruption in Public Service, Article 2.

⁸⁴ Ibid., Articles 14-19.

⁸⁵ The Law on Independent National Regulatory Bodies, Article 15; the Law on Broadcasting, Article 11; the Law on Electric Power and Natural Gas, Article 17.

the country's two main advertising companies, for a period of one year. Moreover, throughout his term as the GNCC chairman, Chikovani held shares in several companies together with Giorgi Gegeshidze, who succeeded him as general director of Rustavi-2, thus retaining an indirect link with one of the companies whose activities he was supposed to regulate. One of Chikovani's and Gegeshidze's joint businesses was the Magi Stili construction company which was contracted for the construction of the new Parliament building in Kutaisi. Another of their joint businesses was Magi Stili Media, a company involved, among other things, in TV advertising (while Chikovani was involved in regulating advertising on television in his official capacity).⁸⁶

In November 2012, the Maestro TV station aired a secret audio recording of Chikovani's meeting with representatives of Caucasus Online, one of Georgia's two major internet service providers. The recording implicated Chikovani in covering up the fact that Caucasus Online had included several foreign TV channels in its cable TV packages without buying the necessary license. Caucasus Online was owned at the time by the majority shareholder of Rustav-2, while Chikovani's old business partner Giorgi Gegeshidze retained a minority share in the same TV channel. Chikovani admitted that the recording was authentic but denied any wrongdoing. Still, he left Georgia shortly after the release of the recording and is yet to return to the country.⁸⁷ A subsequent inquiry by a special parliamentary commission also concluded that Chikovani had violated conflict of interest rules.⁸⁸ It is worth noting that the authorities did not react in any way to Chikovani's evident conflict of interest until 2013, despite the fact that civil society organizations had drawn their attention to the situation for a number of years.

Aside from Irakli Chikovani, the case of Guram Chalagashvili, chairman of the Georgian National Regulatory Commission for Energy and Water Supply, also merits attention. According to his asset declaration, Chalagashvili's wife works at *Georgian Water and Power*, the company operating Tbilisi's water supply system, where she earned a total of GEL 25,024 in 2012.⁸⁹ This appears to be a violation of the legal provision which prohibits family members of independent regulators from involvement in private companies operating in respective sectors and, once again, **points to the poor monitoring and enforcement of the existing restrictions.**

⁸⁶ Transparency International Georgia, "Audio Recording Highlights Conflict of Interest of Top Media and Telecoms Regulator", 12 November 2012, <http://transparency.ge/en/blog/audio-recording-highlights-conflict-interest-top-media-and-telecoms-regulator>

⁸⁷ Ibid; Transparency International Georgia, "A Three-Month Vacation: When the Chair of the Broadcasting Regulator Does Not Show Up to Work", 31 January 2013, <http://transparency.ge/en/blog/3-month-vacation-when-chair-broadcasting-regulator-does-not-show-work>

⁸⁸ Teona Managadze, For.ge, "Law Enforcers To Review Chikovani's Activities, Kvitaishvili Facing Impeachment", 29 July 2013, (in Georgian), http://www.for.ge/view.php?for_id=25505&cat=3

⁸⁹ Guram Chalagashvili's asset declaration for 2013, <https://declaration.gov.ge/declaration.php?id=45327>

IV. Conclusions and Recommendations

The preceding chapters of this report show that, while there is a close connection between the Georgian political elite and the private sector, there are serious gaps in the laws designed to prevent conflict of interest situations in the public sector, including those related to revolving door. Moreover, even the existing regulations are not enforced properly in practice and there seem to be no adequate mechanisms for monitoring the adherence of public service members to the existing rules.

There are some major shortcomings in the current legal framework:

1. Preference for “blanket regulations” as opposed to more detailed rules designed according to the risks associated with concrete offices. The regulations are set out in the Law on Public Service and the Law on Conflict of Interest and Corruption in Public Service which extend to the entire public sector. Wherever there are additional laws or provisions regulating specific offices (such as the legislature, the executive branch, or the local government), these usually reiterate the regulations from the more general laws instead of establishing more detailed rules that would reflect specific risks associated with different offices. The practice of supplementing primary legislation with codes of ethics is not widely used in Georgia either. For example, there are presently no such codes either for members of Parliament or for members of independent regulatory bodies.
2. Flawed post-employment restrictions. The current law does prohibit former public officials from joining private enterprises in the sectors that they supervised for a period of three years. While the existence of this provision is welcome, its practical use is often limited by the stipulation that it only applies to the officials who supervised the sector in question for a period of three years, which renders the law inapplicable to many cases where conflict of interest could have been very real. Also, there is no mechanism whatsoever for monitoring the activities of former officials after they leave public service and their reporting duties expire once they submit their last asset declaration within two months of their resignation.
3. Inadequate regulations for local government members. The majority of Georgia’s local council members presently do not have the status of public officials and are therefore exempt from all relevant restrictions (including the prohibition of parallel involvement in business), while not being required to disclose their assets and business interests either. Moreover, heads of municipal services (administrative bodies spending of large sums from local budgets) are also exempt from asset disclosure. These regulatory gaps make it extremely difficult to monitor conflict of interest situations, including those related to revolving door, at the local level.
4. Absence of revolving door restrictions for independent regulators. While members and staff of independent regulatory bodies are not allowed to engage in parallel business activities during their service in these bodies, there are no legal provisions that would prevent them from joining the enterprises they supervised immediately after leaving the office.
5. Ambiguity as to who is responsible for the monitoring and enforcement of existing rules. As noted in earlier sections of this report. Some officials have been able to violate the existing legal provisions without any consequences for extended periods of time. This is, most likely, the result of the fact that the current legal framework does not identify the body (or bodies) responsible for the enforcement of the relevant rules. Consequently, it appears that no agency is presently monitoring the adherence of public officials to those rules in practice. This applies,

among other things, to the review of the content of asset declarations for accuracy. The absence of a review mechanism has evidently made it possible for some public officials to refrain from disclosing their involvement in certain private companies without any consequences.

In practice, the shortcomings of the legal framework and a number of other factors have combined to produce different types of situations that all involve suspicious dealings between the public and the private sectors and, if left unattended, can significantly undermine the public's trust in the integrity of both government institutions and private companies.

Structural weakness of Georgia's political parties and their lack of sound procedures for candidate selection and promotion has repeatedly prompted the parties to recruit outside candidates for elections both at the national and, especially, at the local level. These tend to be individuals with connections to companies (large companies, in case of Parliament members), who are usually only willing to stay with a political party as long as it retains power and switch sides during periods of power transfer, raising valid doubts regarding the goals they are pursuing in their official capacity and further undermining the public's low trust in representative bodies.

The fact that companies connected with members of Parliament (as well as members of local councils) and former members of the executive branch have been recipients of large government contracts (some of which were awarded without competitive selection and open tenders), exclusive rights/licenses and management rights, as well as poorly justified tax breaks, is bound to feed the existing perception of persistence of grand (or 'elite') corruption in the country. While only a formal investigation and subsequent adjudication by courts could prove the actual abuse of power in each of these cases, they undeniably raise suspicions of corruption given the political connections of the companies in question, the lack of transparency in decision making, and the weakness of supervisory bodies (such as the State Audit Office and the Competition Agency) that could potentially detect irregularities and cases where public agencies are distorting market competition to the benefit of certain companies.

The October 2012 parliamentary elections and the subsequent changes in the government have produced a whole new set of potential conflict of interest (the Ministry of Energy meriting particular attention in this respect). The government therefore needs to implement a number of important measures and reforms as soon as possible in order to avoid a further rise in the public's perception of corruption.

Recommendations

Any future government efforts to address negative impact of revolving door should involve two key components:

- Improvement of the legal provisions designed specifically to address
- More general measures designed to increase transparency in decision making and reduce the scope for subjective decisions/policies that benefit particular companies

The following is a list of more specific recommendations for addressing Georgia's current shortcomings in regulating revolving door and the broader problem of conflict of interest and corruption arising from the interaction between the public and the private sectors:

1. Secondary legislation: The primary laws governing the work of the Georgian public service establish sound general rules concerning conflict of interest but often lack detail. As the international best practice suggests, Georgia should consider supplementing these laws with

secondary legislation and codes of ethics that would be designed according to the specific risks associated with different public offices.

2. Responsible agency: It is presently not clear, which agency is responsible for ensuring compliance with conflict of interest norms (including the revolving door regulations). This problem can be solved through the clarification and expansion of the Civil Service Bureau's powers, or through the establishment of an dedicated agency.
3. Public service members who are required to file asset declarations: These should include local council members and heads of municipal agencies.
4. Content of asset declarations: Officials should be required to disclose beneficial ownership of companies.
5. Content verification: The Civil Service Bureau should introduce a mechanism for routine or random review of asset declarations for accuracy and sanction the officials who fail to report their connections to companies.
6. Post-Employment Reporting: Under the current law, the reporting duties of former public officials expire when they submit their final asset declaration within two months of leaving public service. This means that, after this two-month period, there is little to no possibility of monitoring their dealings with the private sector and their adherence to the post-employment restrictions. One possible way of addressing this problem is to extend the post-employment reporting period and, for example, to require former officials to file another asset declaration one year after leaving the office.
7. Revolving door regulations for independent regulators: As the case of the GNCC chairman demonstrates, there are currently significant conflict of interest risks in the country's regulatory bodies. In order to address these, the authorities should introduce revolving door restrictions for independent regulators which would prohibit commissioners from joining companies operating in relevant sectors for a certain period of time after leaving the office. Special caution must be exercised when appointing as commission members individuals who have commercial interests in the relevant sectors at the time of the appointment.
8. Stronger oversight agencies: Some of the public agencies could potentially help reduce the negative consequences of revolving door movement, provided the authorities ensure that these agencies have sufficient capacity and are protected against the influence of the ruling party of the day. For example, the State Audit Office could detect cases where large government contracts are awarded to certain companies without proper justification. Meanwhile, the Competition Agency could address cases where government agencies are distorting market competition by offering unjustified advantages to some market players. Presently, both agencies are institutionally weak and the authorities should undertake to strengthen them.
9. More transparent decision making wherever public and private sectors interact: Reducing the scope for noncompetitive and opaque selection in public procurement and privatization would go a long way toward reducing the perception of corruption in these two areas. The authorities could start by limiting the types of cases where contracts can be awarded without open tenders and public property can be sold without open auctions (and at token prices).

Annex. Regulating Revolving Door: International Practices

Post-public employment has proven a difficult area to regulate effectively. This is partly because many of the issues involve so-called ‘soft’ conflicts of interest with a degree of ambiguity.⁹⁰ It is also because once officials leave their position it becomes harder to monitor their activities, as they move outside the direct administrative control of government. Furthermore, this is a relatively new area of concern within conflict of interest regulation, and so a consensus on best practice has yet to form, and comparative academic studies are scarce. Nevertheless, the experience of attempts to regulate these issues internationally has produced some valuable insights:

1: Mechanisms of Regulation

In 2006 it was found that of EU member states, 57% regulated the revolving law by law, 21% by ethical codes, 4% by both law and ethical code, and it was unregulated in 25% of states. Primary legislation is the most commonly used instrument, followed by codes of conduct, secondary legislation, other legal documents, and non-legal documents.^{91,92} Strategies are partly dependent on wider administrative culture. For example, France relies mostly on hard legislation, while the UK relies on codes of conduct.

Primary Legislation

Here, explicit provisions regarding post-public employment activities of ministers or civil servants are included in general national law. This has been done in numerous OECD countries, and its use is increasing. It is the most common way to regulate PPE offenses. This usually takes the form of either 1) writing additional laws relating to this area into more general laws on the civil service or on conflicts of interest, or 2) introducing a new law specifically regarding post-public employment and the revolving door.

Examples

The following are examples of primary legislation which has explicit post-public employment provisions include: Canada’s Federal Accountability Act; Turkey’s Law on Prohibitions of Post-public Employment (Law No. 2531); Poland’s Limitation on Conducting Business Activity by Persons Performing Public Functions Act (1997); Ireland’s Ethics in Public Office Act (1995) and the Standards in Public Office Act (2001)

Advantages and Disadvantages

- The advantage of using primary legislation to is that it allows for **effective enforcement and prosecution** of offences, and can therefore provide a stronger deterrent against abuse.

⁹⁰ Leung, J. and Scott, I. (2008) ‘Managing Integrity: The Regulation of Post-Public Employment in Britain and Hong Kong’, *Public Organization Review*, 8 (4), 365-380.

⁹¹ OECD (2007) ‘Public Integrity and Post-Public Employment: Issues, Remedies and Benchmarks’, *Public Governance Committee: Expert Group Meeting on Conflict of Interest.*, 14

⁹² Moilanen, T. and Salminen, A. (2006) ‘Comparative Study on the Public-Service Ethics of the EU Member States’, *Report from the Human Resources Working Group, EUPAN*, available at http://www.vm.fi/vm/en/04_publications_and_documents/01_publications/06_state_employers_office/Comparative_Study_on_the_Public_Service_Ethics_of_the_EU_Member_States.pdf, p.17.

- On the other hand, primary legislation is a fairly **blunt and inflexible** tool, which usually has to apply to broad categories of politicians and civil servants. It is difficult to tailor to certain government roles, and it could repel good candidates from public service if the law is too restrictive and is seen as restricting employment freedom or future career prospects.

Secondary Legislation

In this case, rules and regulations are developed by bodies and departments, with devolved authority for implementing conflict of interest legislation given to them by the legislature.

Examples

In Japan, primary legislation in the form of the National Public Service Law is supplemented by secondary legislation in the form of the rules of the National Personnel Authority.

Advantages and Disadvantages

- This type of legislation has the **advantage of greater flexibility**. Many states have written general, abstract principles on the revolving door into primary legislation, while the leaving specific details of regulation and implementation to devolved authorities who can modify their rules and practices according to circumstance.
- On the other hand, it **removes direct parliamentary oversight** and scrutiny that is achieved with primary legislation and may be less easy to enforce.

Contract Clauses

Various other legal mechanisms have been deployed in the fight against revolving door conflict of interests. The most common is use of clauses in employment contracts for the public sector and political positions.

Examples

In 2005, Norway adopted separate post-employment guidelines for the public service and for politicians that are only applicable if they are incorporated into the employment contract of the particular employee. In Canada, compliance with 2006 Conflict of Interest Act is condition of employment for heads of departments and political executives. Many agencies in the Australian public service include references to their postemployment rules in contracts with private sector organisations⁹³

Advantages and Disadvantages

- These have the dual **advantages of flexibility** (clauses in contracts could be tailored to the specific context of the role) **and enforceability** (contracts provide a strong legal foundation for future sanctions if clauses are breached). They also provide a mechanism for the state to enforce these provisions on private sector businesses which they deal directly with.
- Furthermore, it allows for government to ensure private sector companies it does business have to abide by and monitor the revolving door themselves, as it can be included in their contracts with the state
- This disadvantages of this approach may be that it **requires more administrative time**, as each position has to be evaluated for the risk it poses and tailored clauses drawn up for different public sector roles.

⁹³ OECD (2007) 'Public Integrity and Post-Public Employment: Issues, Remedies and Benchmarks', *Public Governance Committee: Expert Group Meeting on Conflict of Interest*. 15

Codes of Conduct

Many OECD countries adopt codes of conduct for the civil service, politicians, legislators, or a combination of these, which include provisions on post-employment.

Examples

The UK has an extensive Civil Service Management Code which is a condition of employment, and which includes provisions on Post Public Employment. There are also PPE provisions in: Slovakia 'code of ethics' for civil servants; Turkey bylaw on Codes of Ethics for Public Servants; Spain's Code of Good Government; Ireland's Civil Service Code of Standards and Behaviour.

Advantages and Disadvantages

- These may be effective to a certain extent in building and **strengthening a public service ethos** across government departments.
- However, these have a far less secure legal basis than contracts or primary legislation, and in the absence of sanctions can be ineffective. Furthermore, the very nature of the revolving door is that it is a problem encountered often after officials have left office and cease to be governed by code of conducts.
- Transparency International Georgia has already conducted research on the parliamentary code of conduct. This research suggested that they **have not been taken seriously or been effective due to their voluntary nature**.⁹⁴ Therefore they are not recommended as an isolated tool in any strategy to regulate the revolving door.

Regulatory Mechanisms for the Revolving Door

	Variations	Advantages	Disadvantages
Primary Legislation	Civil Service Acts; Conflict of Interest Acts; Criminal Codes	Easily enforced; ability to prosecute offenders	Lacking flexibility; difficult to amend and change; May deter good candidates from public service
Secondary Legislation	Directives; decrees; rules	Add flexibility to primary legislation; easier to modify to aid implementation	No direct scrutiny from parliament
Contract Clauses	Employment contracts of Public Servants; Contracts between the State and Businesses	Can tailor employment restrictions to role; Can enforce compliance with companies the state does business with	Cannot provide comprehensive framework or principles
Codes of Conduct	Applied to civil service vs politicians/legislators vs both; loosely worded principles vs detailed rules	Can promote an ethos of integrity; Can supplement other measures	Hard to enforce and non-binding; hard to apply after leaving office

2: Content of Regulations

⁹⁴ *Case Study: the Georgian Parliament's Code of Ethics: Implementation and Recommendations for Reform*, Lasha Gogidze, Transparency International Georgia, 2012, http://transparency.ge/sites/default/files/post_attachments/Georgia%27s%20Parliamentary%20Code%20of%20Ethics%20-%20A%20Need%20For%20Reformation.pdf

Cooling Off Periods

This is most common mechanism used to regulate the revolving door. Typically, it involves preventing former officials from taking employment or directorships with companies in the sector they were regulating. Sensitive information gleaned in office tends to have a limited period of usefulness or a 'shelf life'; insider knowledge of projects, policy initiatives and other decisions will also lose commercial value over time; influence with serving officials will tend to decrease. This also lessens the risk of them granting favorable decisions to companies in order to secure commercial advantage or employment directly after leaving.

Examples

- In general this 'cooling-off' period is one year, for example for public servants in Canada, Ireland, Mexico, Poland and Slovakia; or two years, for example in Japan, Korea, the Netherlands, Turkey and the United Kingdom.
- Germany has a 5 year maximum cooling off period for Civil Servants before retirement age, and 3 years for retiring Civil Servants

However, as cooling of periods are inevitably somewhat arbitrary - and even if set at a high level may not safeguard against misconduct in certain cases - other more specialized regulatory mechanisms have been developed.

Prohibition on Use of Insider Information

Examples

- Mexico establishes the following restrictions for a year after public officials leave office: 'He will not make advantageous use for his own or another's benefit, of the information or documentation he has had access to during his employment or commission and that is not within the public domain'.⁹⁵
- Finland's guidelines recommend a case-by-case basis for use of post-employment contract clauses: they are only used when in possession of sensitive information

Restrictions on Switching Sides

Examples

- In Canada, no former public office holder is permitted to 'act for or on behalf of any person or organisation in connection with any specific proceeding, transaction, negotiation or case to which the Crown is a party and with respect to which the former public office holder had acted for, or provided advice to, the Crown'.
- Regulations have been introduced on this in Canada, France, Ireland, Italy, Mexico, Turkey, the United Kingdom and the United States.

3: Tailoring Regulation to Role

⁹⁵ OECD (2006) 'Avoiding Conflict of Interest in Post-Public Employment: Comparative Overview of Prohibitions, Restrictions and Implementing Measures in OECD Countries', *Public Governance Committee: Expert Group Meeting on Conflict of Interest*.
<http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=GOV/PGC/ETH%282006%293&docLanguage=En> p.6

Not all government roles carry the same risk of conflicts of interest arising from the revolving door, so a differentiated regulatory framework is advisable. Officials working in regulatory enforcement roles or public procurement are particularly vulnerable to granting leniency and favors, while other roles may represent less of a risk. Energy, health and defence sectors are particularly vulnerable, but these risks vary based on country-specific factors and context. It is important that regulations do not deter good candidates entering the public service or impose unnecessary administrative burdens.

Experience has shown that the post-public employment regulation system should be able to tailor rules to different roles and positions. This should be linked to the executive decision making powers of the role, seniority and status, and access to sensitive information. This can involve: 1) different rules for different categories of officials (e.g. parliamentarians, ministers, civil servants) 2) for different departments or ministries 3) for different positions and level of responsibility.

Examples

- In the United States, the post-employment restrictions vary depending on the level of the official; the more senior the official is, the stricter the restraints are.
- Canada has a longer cooling off period for Cabinet ministers (two years) than for other public office holders and for public servants (one year).
- Italy has specific regulation for high risk areas, e.g. regulation of energy and telecoms, procurement and contract management employees.

4: Enforcement and Monitoring

“A seemingly sophisticated and comprehensive post-employment regime can be rendered ineffective if it does not have, or enforce, appropriate sanctions” – OECD

Institutions

In general there are two institutional ways of managing revolving door issues:

1. A **government wide integrity agency** which deals with all types of integrity and conflict of interest issues:
 - E.g the Ethics Commission in France. It is obligatory for officials to consult this before moving to Private Sector. It handles all individual cases across the public service and reports to the Prime Minister
2. An **independent committee or advisory board** specifically relating to the revolving door, usually made up of senior civil servants, experts and civil society representation. This is more targeted and cheaper but less comprehensive:
 - Japan established the Center for Personnel Interchanges under the cabinet office, a body which exclusively provides Post-Public Employment advice, information and monitoring.
 - Some countries have independent committees, e.g ACOBA in the UK and the Outside Appointments Board in Ireland which officials must consult before taking jobs after leaving, and who monitor the revolving door for possible problems.

Final approval decisions are often taken by the top management of public organisations – e.g. the head of the organisation for the Civil Service in Norway or the secretary general of departments in Ireland - who are accountable even if they delegate authority to other bodies.

Sanctions

Legislation can provide **Criminal or Civil Penalties**. For violating legislations, some countries have criminal penalties. For Codes of Conduct, there are mainly administrative sanctions – fines, demotion, and dismissal.

Examples

- Japan's National Public Service law states that anyone who violates post-employment restrictions and prohibitions shall be sentenced to a prison term of up to one year or fined up to thirty thousand yen.
- Korea has a maximum of one year in prison for PPE offences
- The US provides for criminal penalties of up to 5 years imprisonment and fine of up to 250,000 dollars.

A major problem is that departments can only really apply sanction while still in office, but the nature of these offences makes this potentially ineffective. For this reason some countries have penalties which can be applied **after leaving office**:

- Spain can prevent officials being employed in public office for 5-10 years, stop the company which they move to taking part in any government contracts for the same period, and reduce their public service pension.
- Germany can also provide for the curtailing of pensions.

Flexibility

Some countries have mechanisms providing for flexibility in enforcement. Care should be taken to mean that these mechanisms do not allow officials to bypass restrictions without good reason.

Examples

- In Japan, the head of the employer government agency can apply to national personnel agency (and requires its approval) to gain exception to PPE rules for its staff.
- Canada has guidelines which administrative heads of departments can use as basis for waiving PPE restrictions, based on factors such as employment prospects, the circumstances of termination, the significance of information they might possess, the degree to which their new employer might gain, and the authority they had in Public service

Education

Enforcement is aided by officials being clear about the rules, and all parties being comfortable with the procedures used to manage possible conflicts of interest caused by the revolving door. This also extends to communicating with the private sector, who employ these officials

Examples

- In Ireland all new staff receive the Civil Service Code of Standards in briefing sessions upon appointment.
- In Canada the Values and Ethics Code is attached to the letter of appointment
- The US holds seminars with Private Sector companies about PPE regulations for companies who may hire former Officials

4: Transparency and Disclosure

Transparency in decision making about the post-employment activities of government officials and the reasons behind them is especially crucial. Through making these activities visible, public and media scrutiny is enhanced, which is vital to supporting compliance. If officials know that their appointments will be publically known this may act as a deterrent against seeking roles where there are suspicions of conflicts of interest. This is arguably the single most important feature of revolving door regulation, due to the ambiguities and the difficulties with monitoring and enforcement on this issue: it is vital that public scrutiny and the media can go some way towards filling this accountability void.

This could be an especially important area in the case of Georgia, as it provides a mechanism for compliance through public, media and civil society scrutiny. This means that when questionable situations arise regarding post-public employment conflicts of interest, the official's reputation will suffer even if the regulatory enforcement framework proves ineffective or impotent with regard to sanctions.

Examples

- In Norway decisions on post-public employment cases of former politicians and political advisors are directly available online, with information about the details of these cases and the reason for the advice and decisions made by the oversight committee. This has made public scrutiny important part of compliance framework in this country.
- New York City has a website providing information, advice and case studies advice, and an FAQ about revolving door cases.
- The US publishes all convictions under the Conflict of Interest Act online every year. This means officials can see which scenarios lead to prosecutions.
- The UK advisory Committee on Civil Service Appointments publishes an annual report on the application of PPE rules and guidelines, including stats

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