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LATVIA'S ANTICORRUPTION POLICY: PROBLEMS AND PROSPECTS

The study analyses the situation
as at mid-December of 2001

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EXECUTIVE SUMMARY

The intention of this report is to analyse three aspects of corruption: (i) conflicts of interest, (ii) declaration of assets and income, and (iii) public procurement. While each has been the subject of considerable previous attention in Latvia, this report adds new information from progress on similar issues in other countries, and attempts to assess the feasibility of making improvements in Latvia.

The report concludes that in terms of corruption problems, no country is immune. In all countries, anticorruption measures represent a continual struggle. Moreover, no country is absent of legal loopholes. In fact, the most important source of corruption prevention is in the social cohesion and self-regulation of common citizens. In the best of circumstances, even if it is possible to cheat, it is just not acceptable.

In terms of corruption perception, Latvia ranks 59th out of 91 countries. Thus, Latvia's external ratings and its reputation for honesty and efficiency are better than in many other countries. However, it is in the interests of the Latvian people to achieve a highly developed democracy and a standard of living comparable to that of the world's richest countries. Corruption is counterproductive to the principles of democracy because it distorts the political equality of the people and their equality before the law. Corruption also slows down economic development, since fair competition requires that those succeed who are the best rather than those who pay bribes. Moreover, Latvia's strategic interests call for it to join both the European Union and NATO. This means that our country will be judged by new standards and new criteria, typical of other members of the European Union – Germany, Sweden, and Denmark. This increases the demands on Latvia's anticorruption policy.

The report concludes that the most significant challenge in Latvia is not new legislation or regulation. In fact, the content of Latvia's anticorruption legislation and regulations is fairly comprehensive and progressive. The challenge facing Latvia is the enforcement of the legislation and regulation already on the books. In this context, the report concludes that to gain credibility in Latvia and the European Union, anticorruption policy must fulfil three objectives:

First, it must ensure that conflicts of interest become unacceptable at all levels of state and local government, regardless of the possible loopholes in one or another law. Second, it must decide whether it is feasible to register the property and income of the whole population. If yes, then extensive and potentially unpopular measures will have to be taken within the framework of the tax system. If no, then this suggestion must be abandoned. Third, all sensible measures, which can prevent corruption in public procurement, must be undertaken with perseverance.

The report also concludes that anticorruption is a continual struggle, but that Latvia's entire future – and the future of each citizen – will be affected by the degree to which regulations can be effectively enforced, and more, the degree to which the pressures to not cheat can become self-generated. If that occurs, then Latvia can be assured a welcome into Western Europe and within the group of progressive nations worldwide.

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SYNOPSIS

As in many other countries, in Latvia, too, corruption is a major problem. In the 2001 Transparency International (TI) Corruption Perception Index, Latvia ranked 59th – midway down the list of 91 countries. Corruption perception and, possibly, the actual level of corruption are to some extent connected with a country's level of prosperity. In Latvia, in the last couple of years, GDP has increased dramatically, which means that there are good prospects of reducing corruption, provided that effective policies are carried out. Another important factor in reducing corruption is the public. Public debates have focused so much attention on corruption that public awareness of the negative effects of corruption is gradually increasing.

It would appear that these and other factors have greatly improved prospects for the prevention of corruption in Latvia. However, the anticorruption policy that was launched in this country in the mid-nineties has not produced the anticipated results. Although this policy is based on many rational principles and comprises many appropriate measures, facts and figures indicate that the corruption situation has not significantly improved.

Over the years, the Latvian government has endorsed a number of anticorruption policy documents, among them anticorruption programmes and an anticorruption Framework Document. These documents call for various types of anticorruption measures, with focus on **prevention of conflicts of interest** and **registering of assets**.

In an attempt to prevent conflicts of interest, in 1995, the *Saeima* enacted the Law on Prevention of Corruption (Anticorruption Law). Provisions that restrict conflicts of interest have also been included in other regulatory enactments. At the time of the writing of this report, the government had prepared a draft law on prevention of conflicts of interest, which will replace the current Anticorruption Law.

Although steps have been taken to prevent conflicts of interest, nothing has yet been done to start registering ownership of assets, with the exception of a few attempts involving tax collection and declarations of public officials. At the time of the writing of this report, the government had prepared a draft law on initial declaration of personal assets.

An analysis of the application of the Anticorruption Law shows two forms of violations committed by public officials. They often overlap, but are not always the same – carrying out official duties in a conflict-of-interest situation and failure to observe the restrictions

imposed on specific public officials. However, **prevention of conflicts of interest in office** must be established as one of the most important and practically applicable principles of public administration.

It has often been pointed out in discussions that **registering of assets and changes thereto** could be an effective instrument in combating corruption among public officials and a number of other crimes. Registering the private property of the population is an extremely difficult undertaking. There are two possible ways of proceeding, if the results are to be positive. If the government sticks to its intention of registering all private property owned by the population, this must be done within the framework of the tax system, following the example of some of the Scandinavian countries. If the government is not prepared to reform the tax system and base it on registration of all personal assets and personal income, it should give up the idea of registering personal property as a means of fighting corruption and other crimes.

What is needed for a professional and concerted **assessment of conflicts of interest** in the whole public administration apparatus is the necessary competence and a systematic approach. That is why the planned Anticorruption Bureau (ACB) should be charged with assessing conflicts of interest, if such are suspected, and consulting public officials who want to make sure that they or their subordinates are not risking a conflict of interest.

Where corruption is concerned, a particularly susceptible area is that of public procurement, both at state and local government level. This report and a previously published World Bank report include a number of recommendations for improving procurement legislation to prevent corruption. In addition to improving regulatory enactments on public procurement, corruption can be prevented by improving **investigation of corrupt activities** and **restricting opportunities for illicit financing of political parties.** The latter is important for elimination of the link between political party financing and funds stemming from fraudulent procurement practices.

Anticorruption policies are extremely dynamic and, by the time this report is published, some of the information presented here will already be outdated. The situation examined in this report is the situation that prevailed in mid-December 2001.

Latvia has made considerable progress in its battle against corruption. However, much remains to be done. Since the major source of the problem is not inadequate legislation or regulation, but inadequate enforcement, the report concentrates on what should be considered in terms of new, feasible and transparent enforcement procedures.

This report also reviews regulations and enforcement activities in several other countries, provides illustrations of those that are most relevant, and recommends improvements to current legislation and enforcement procedures in Latvia.

The author is most grateful to the officials and experts who provided information and insights into the area of analysis. The quality of the report has also been greatly enhanced by the reviewers of this paper.

DEFINITION OF THE PROBLEM

When, at the beginning of the 1990s, Latvia started transforming the Soviet administration system and creating new – democratic – institutions, society had no more than a faint notion about corruption, conflicts of interest and their potential hazards. Fairly soon after renewal of Latvia's independence, a number of scandals involving misappropriation of public funds and misuse of authority for personal gain brought corruption to the attention of the public.

Latvia's first step in combating corruption is sometimes considered to be the Anticorruption Law that was enacted on September 21, 1995. Although the name of this law contains the word "corruption," the law itself was aimed more at preventing conflicts of interest. It prescribed a series of restrictions on the activities of public officials and regulated the declaration system for the same.

In 1996, the *Saeima* passed the Law on State and Local Government Procurement. For the first time since renewal of independence, public procurement, which is extremely susceptible to corruption, was regulated by the law.

In 1997, the Anticorruption Council was set up – a coordinating institution established by the Cabinet of Ministers for the purpose of developing and implementing a concerted government anticorruption policy. In February 1998, the Cabinet endorsed the Council's first Anticorruption Programme.

A new stage in the government's anticorruption policy began in 2000, when the Cabinet adopted the Anticorruption Framework Document (see Appendix 1). The tasks set out in this document included drafting of a new anticorruption law, initial registration of assets and introduction of the so-called principle of legal presumption. In 2001, the government prepared a package of new anticorruption laws. The most important ones are the drafts of laws on initial declaration of personal assets, on prevention of conflicts of interest in public administration and restrictions on the conduct of public officials, and on the Anticorruption Bureau. In an anticorruption context, another important draft law is the Law on Political Financing, which calls for funding of political parties from the state budget.

In this policy analysis, **the main problem is the inadequate effect of the anticorruption measures that have been applied**. In order to determine the reasons for the partial failure of the anticorruption policy, it is necessary to analyse one of the cornerstones of this policy – control of conflicts of interest – and one of the most often mentioned and, as yet, unimplemented measures – initial declaration of assets. In order to illustrate the complexity of anticorruption measures, the analysis also examines the public procurement issue.

Anticorruption policies both in Latvia and elsewhere comprise countless different tactics and approaches. The strategy of the government's Anticorruption Programme consists of many measures that must be carried out in three major areas: preventive action, sanctions, and education. It is impossible for a single policy analysis project to analyse all of these measures, which is why attention has been focused on the three previously named aspects – control of conflicts of interest, declaration of assets and income, and prevention of corruption in public procurement.

I. CONTROL OF CONFLICTS OF INTEREST

1. Conflicts of interest and their different forms

According to the Transparency International (TI) Source Book, conflicts of interest occur when public sector employees or officials are influenced by personal considerations when performing their official duties. This has the effect that decisions are made for the wrong reasons. Furthermore, perceived conflicts of interest can be just as damaging to the reputation of an institution or agency as actual conflicts of interest, even if the right decisions have been taken.[1] Personal considerations or interests that cause conflicts of interest can be of a financial or non-financial nature. The TI Source Book distinguishes between actual and perceived conflicts of interest. Here, one can add a third category – potential conflicts of interest.

As one can imagine, in an actual conflict-of-interest case, an official finds himself in a situation where he is faced with real conflicting interests. For example, an official must make a decision regarding a contract for supply of goods. One of the bidders is a company that belongs to the official's brother. In this case, the official has a personal interest in helping his brother, a close relative, and awarding the contract to the brother's company, regardless of the fact that another company's bid is more opportune for the agency that employs the official.

A perceived conflict of interest occurs when an official is not actually in a conflict-of-interest situation, but the public and, possibly, the official's superiors and colleagues may get the false impression that there is actual or potential conflict of interest. This could be the case in a situation where a private individual, who falsely appears to be in some way connected with the official, regularly benefits from decisions made by the official (e.g., receives lucrative contracts), although, in reality, the official has no personal interests with regard to this person.[2]

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1 TI Source Book 2000. Chapter 21: Conflict of Interest, Nepotism, Cronyism. www.transparency.org/sourcebook/21.html Last viewed on November 25, 2001.

2 There can be different types of situations in which persons may falsely appear to be in some way connected. For example, it may appear that a public official and former fellow student are connected, but, in reality, it is possible that these two persons have never had closer relations with each other.

A potential conflict of interest occurs in a situation where there is great likelihood of an actual conflict of interest. For example, an official who is responsible for awarding a city's construction contracts would find himself in a potential conflict of interest, if his wife were the owner of one of the largest construction companies in this city. The potential conflict of interest would become an actual conflict of interest at the moment when the wife's company pursues a construction contract with the city, which would be awarded by this official.

Most definitions of conflict of interest distinguish between conflicts of interest and corruption. Generally speaking, if corruption of public officials is taken to mean abuse of authority for personal gain,[3] then conflict of interest represents only a heightened risk or danger that an official may actually misuse his authority for personal interests. Thus, by preventing conflicts of interest it is possible to reduce the risk of corruption or indirectly avert it. This is probably one of the reasons why the 1995 law, which is primarily concerned with limiting possible conflict-of-interest situations in the public sector, is called the Anticorruption Law.

Box 1.
Definitions of conflicts of interest and corruption

Basic definition of conflict of interest: a situation in which persons who are public sector employees or officials are influenced by personal considerations in the performance of their official duties, as the result of which decisions are made or action taken for the wrong reasons.

Perceived conflict of interest: a situation in which an official is not actually in a conflict-of-interest situation, but the public and, possibly, the official's superiors and colleagues may get the false impression of an actual or potential conflict of interest.

Potential conflict of interest: a situation in which there is a heightened risk of an actual conflict of interest.

Conflict of interest, as defined in the Anticorruption Law: a situation in which a public official must perform official duties in cases where, parallel to public interests, there are also the personal material or other interests of the public official or the kin of such official (Section 3, Part 2).

[3] TI Source Book 2000. Chapter 2: The Anatomy of Corruption. www.transparency.org/sourcebook/02.html Last viewed on November 25, 2001.

Basic definition of corruption: abuse of authority for personal gain.

Corruption, as defined in the Anticorruption Law: corruption, within the meaning of this law, is the unlawful use of public office for material or other personal gain (Section 2).

2. The current situation in Latvia

The Anticorruption Law. The objectives of this law are: 1) to ensure transparency in the activities of public officials; 2) to prevent situations in which public officials can be unlawfully influenced; 3) to prevent performance of public duties in conflict-of-interest situations.[4] Chapter 2 of the law sets out a series of restrictions on the activities of public officials. Chapter 3 addresses the declaration system of public officials. Chapter 4 prescribes control measures for enforcement of the law and assigns this responsibility to the State Revenue Service (SRS). The Anticorruption Law has been amended several times (on December 21, 1995; May 16, 1996; October 15, 1998; March 18, 1999), but the basic principles – the restrictions on the activities of public officials and the declaration system – have been preserved.

The Anticorruption Law has been severely criticised on a number of occasions. Criticism of the law culminated in 1997, when it became known that half of the Cabinet ministers (10) and almost a third of the *Saeima* deputies (32) had violated the Anticorruption Law.[5] The law was particularly harshly criticised by the former Minister of Transport and Minister President, Vilis Krištopans, who had managed to violate several norms of the law.[6]

On June 1, 1999, the Cabinet heard a report on necessary amendments to regulatory enactments that deal with the prevention of corruption. In this report, a separate section was devoted to problems involving the Anticorruption Law. The report pointed

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4 Anticorruption Law, Section 1. *Latvijas Vēstnesis*, October 11, 1995; May 31, 1996; November 4, 1998.

5 Vilks, Andrejs (ed.). Kriminoloģija. Nordik, Riga (1998), p. 307.

6 See Kalniņš, Valts. Tiesu vara un korupcija (Judicial power and corruption). Riga (2001), Chapter 4, Part 2.1: "Viļa Krištopana KNL pārkāpumi".
For information on V. Krištopans criticism of the law, see: *Dienas Bizness,* February 4, 1999. "Latvijai ir vajadzīgs jauns korupcijas novēršanas likums. Ministru prezidenta V. Krištopana uzruna par korupcijas novēršanu Latvijā" (Latvia needs a new anticorruption law. Speech by Minister President V. Krištopans at a conference on prevention of corruption in Latvia).

out, for example, that the Anticorruption Law inadequately regulates the conduct of public officials in conflict-of-interest situations. It was also critically pointed out that the law attempts to encompass all public officials by applying uniform regulations. (This criticism is not entirely accurate because certain restrictions, for example, on combining duties and on carrying out duties, actually do differ for different categories of public officials.) One important point of criticism was that the Anticorruption Law attempts to define conflict of interest with a meticulous index of degrees of kinship and capital shares in business: "This kind of indexation is certainly necessary, especially for political officials, but it can never be comprehensive. This leads to paradoxical situations in which undeniably amoral conduct, which should be prevented, must be considered perfectly legitimate in accordance with the Anticorruption Law."[7] The authors of the report also identified shortcomings in the system for monitoring implementation of the law. They pointed out that the State Revenue Service is considered to be one of the institutions most susceptible to the risk of corruption: "It is hard to imagine public involvement in fighting corruption, if the institution which has been charged with preventing corruption does not enjoy sufficient public trust."[8]

The Civil Service Law. Restrictions that reduce the risk of conflicts of interest can also be found in other regulatory enactments. Section 7, "Mandatory requirements for applicants," of the Civil Service Law, Clause 9 states: "Any person aspiring to become a civil servant [..] shall not be a relative (spouse, first-degree in-law or kin, or a brother or sister) of the director of the agency, or of a direct superior. The Cabinet may permit exceptions in cases where the agency in question cannot otherwise carry out its functions." This requirement partially targets a specific form of conflict of interest – nepotism. Strictly speaking, nepotism refers to a situation in which a person uses his or her public power to obtain a favour – very often a job – for a member of his or her family.[9]

Section 17 of the Civil Service Law, "Restrictions on commercial activities, acquisition of income, combining of duties, employment and other activities" states: "Restrictions on commercial activities, acquisition of income, combining of duties and employment of civil servants, and restrictions and obligations connected with such activities are determined by the Anticorruption Law."[10]

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7 Report on necessary amendments to regulatory enactments that deal with the prevention of corruption. Heard by the Cabinet on June 1, 1999. Chapter II "Problems in the current Anticorruption Law," Clause 6.

8 Ibid. Chapter III "The institutional system for corruption prevention," Clause 2.

9 TI Source Book 2000. Chapter 21: Conflict of Interest, Nepotism, Cronyism. www.transparency.org/sourcebook/21.html Last viewed on November 25, 2001.

10 Civil Service Law. *Latvijas Vēstnesis,* September 22, 2000.

A civil servant's principles of conduct. Part 4 of the Cabinet's Instruction No. 1 (January 9, 2001), "A civil servant's principles of conduct," outlines the principles of conduct for civil servants in conflict-of-interest situations: in performing official duties, a civil servant shall not take into account personal interests; a civil servant shall not influence other public servants with the intent of personal gain; a civil servant shall use his position and any information acquired while carrying out official duties solely in the public interest.

Clause 17 of the instruction specifies that any natural or legal person has the right to submit a complaint to the director of the agency in question, if the conduct of a civil servant has violated these principles. The director of the agency must examine the complaint and decide whether to initiate disciplinary action.[11] The principles of conduct set out in the instruction have the potential to prevent civil servants' conflicts of interest. If a complaint were filed, claiming, for example, that a civil servant had been guided by personal interests in the performance of official duties, it would be possible to apply the appropriate disciplinary measures.

Control of implementation of the Anticorruption Law. For the State Revenue Service, control of implementation of the Anticorruption Law is a big job. On July 1, 2001, there were 40,270 public officials registered with the State Revenue Service, who were required by the Anticorruption Law to file declarations. During the first six months of 2001, altogether 123 public officials were held accountable for non-compliance with the regulations of the Anticorruption Law, and fines were imposed for a sum of 2,540 lats.[12] In 2000, 4.79% (1,931 declarations) of all declarations submitted to the State Revenue Service by public officials were audited. 287 violations were uncovered and 287 fines imposed for a total of 5,686 lats.[13]

Despite the efforts by the SRS and other institutions and the experience that has been acquired, ambiguities still remain in the interpretation of the law. A good example is a trip to Spain in May of 2001 undertaken by Riga City Council deputies Guntis Pilsums, Aivars Kreituss, Orvils Heniņš, Transportation Department director Ivars Zarumba, and advisor to the City Council chairman, Leonards Tenis. Expenses in Spain were covered by the Sainco Trafico company, which develops traffic flow and intersection regulation systems.[14]

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[11] Cabinet Instruction No. 1 (January 9, 2001), "A civil servant's principles of conduct." *Latvijas Vēstnesis*, January 12, 2001.

[12] State Revenue Service report to Chairman of the *Saeima* Presidium, Jānis Straume, on enforcement of the Anticorruption Law, No.7-17/15 250, August 21, 2001.

[13] Ministry of Finance, Annual Report 2000, p. 29. http://www.fm.gov.lv Last viewed on November 25, 2001.

[14] LTV *Panorāma*."Four Riga City Council deputies go to Spain to study traffic regulation strategies." May 29,2001. http://www.tvnet.lv Last viewed on December 11, 2001.

After this trip, the State Revenue Service concluded that A. Kreituss, O. Heniņš and G. Pilsums had violated the restrictions imposed by the Anticorruption Law on acceptance of gifts, and expressed a verbal reprimand.[15] However, the chairman of the City Council, Gundars Bojārs, defended the officials, saying that he was all for saving taxpayers' money, if official trips could be taken at the expense of private companies.[16] This case is a good illustration of differing interpretations of the Anticorruption Law and of differing views on the need to control conflicts of interest. A situation in which the head of one government institution publicly voices a position that differs from that of the institution responsible for controlling conflicts of interest does not create a positive climate for consistent efforts to control conflicts of interest.

This example also demonstrates the need for a procedure that would allow officials to receive a competent and binding assessment of an undertaking or activity with regard to possible conflict of interest. The above case and many others show that it can frequently be difficult for an official or for the director of a government institution or agency to judge whether a specific case represents a conflict of interest.

Box 2.
The President of the Bank of Latvia and conflict of interest

The question of whether the Anticorruption Law can produce the desired results surfaced recently in connection with a bank account opened by the Bank of Latvia president for donations that he would receive as the fee for chairing a new political party.

According to the Anticorruption Law, the President of the Bank of Latvia is a public official. In August 2001, the president announced his intention to take part in creating a new political party and wished to receive a one-off fee for this service. For this purpose, a bank account was opened for donations that would go towards paying the fee. A specific condition of the account was that the president would receive the money only when he had resigned from his job at the Bank of Latvia and – no longer a public official – set about creating a new political party. This launched a discussion about whether or not the president had violated the Anticorruption Law, in particular the restrictions on acceptance of gifts in Section 3 of the law. Section 3, Paragraph 1 says that, while carrying out official duties, it is forbidden for

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[15] SRS. Violations of the Anticorruption Law uncovered during audits of public officials. January 1, 2001–July 1, 2001. Head of the Anticorruption Control Department, A. Krastiņa.

[16] LETA. "Bojārs still defends violators of the Anticorruption Law." November 7, 2001. http://www.delfi.lv Last viewed on December 11, 2001.

a public official to accept any gifts or other material benefits. A public official may accept gifts, while not carrying out official duties, from persons with regard to whom such official has not made decisions, carried out monitoring or control measures, collected information or imposed fines during a preceding period of one year. Furthermore, for a period of one year following acceptance of a gift, the official may not undertake any of the above activities with regard to the donor of the gift.

The Department for Protection of the Rights of Individuals and State of the Latvian Prosecutor General's Office examined the case to determine whether or not the president's activities were in conflict with restrictions on acceptance of gifts. The Prosecutor General's Office concluded: "Although, according to Section 3 of the Anticorruption Law, the donations that have been deposited in this account should be considered as gifts, our examination did not show E. Repše to have accepted these donations in connection with official duties or apart from his official status, because the agreement with the bank specifies that the president will receive these funds only when he is no longer employed by the Bank of Latvia and when, no longer in the status of a public official, he undertakes the forming of a new party. [Latvian Prosecutor General's Press Centre. Information for the press, October 30, 2001.]"

The assessment of the Prosecutor General's Office leads to several conclusions. First of all, it would appear that certain amendments should be made to the Anticorruption Law. If one considers that the president has not actually accepted the gift before he has withdrawn the money from the account, it would be logical to consider that the donors have promised the president gifts on the condition that he fulfil certain requirements – resign from his job as president of the Bank of Latvia and undertake to create a new political party. However, the promise of a gift can comprise just as great a potential for conflict of interest as the acceptance of a gift. If one wishes to strengthen the norms of the law that deal with prevention of conflicts of interest, one must place restrictions not only on the acceptance of gifts, but also on the acceptance of offers or promises of gifts. Here, an analogy with the European Criminal Law Convention on Corruption could be applied, which prescribes liability not only for accepting a bribe, but also for accepting the offer or promise of a bribe (Law on the European Council Criminal Law Convention on Corruption. *Latvijas Vēstnesis*, December 20, 2000).

The other possibility would be to examine in detail whether the president, in opening an account for donations that would constitute his fee, had not landed himself in a conflict-of-interest situation where as a public official he would be required to apply his authority in matters in which not only his

interests as a public official, but also his personal material or other interests, or those of his kin might play a role. Such a situation could arise, for example, if the President of the Bank of Latvia had to make a decision regarding commercial bank X, whose president Y had donated a certain sum for his fee. In this case, it would make no difference whether commercial bank president Y had donated this money as an official of bank X or as a private person. In either case, as a token of gratitude, the President of the Bank of Latvia could be tempted to make a decision that was favourable to president Y of commercial bank X.

The first option (prescribing more rigorous restrictions on gifts) calls for amendments to the Anticorruption Law. In the second case (investigation of possible conflicts of interest) the law could, possibly, remain unchanged. The main advantage of the first option would be that it would eliminate all ambiguities in connection with offers or promises of gifts. In the second case, the activities of those whose duty it is to apply the law would be more focused on achieving the objective of the law. Section 1, Clause 3 of the Anticorruption Law states that the objective of the law is to prevent public officials from carrying out their duties in conflict-of-interest situations. To make this even clearer, the Anticorruption Law should state that observance of specific restrictions and prohibitions does not relieve a public official from the obligation to put an end to a conflict of interest.

In general, control of implementation of the Anticorruption Law has focused mainly on whether a public official has violated specific restrictions. Less attention has been paid to whether or not an official has carried out his duties in a conflict-of-interest situation. Another problem is that the number of officials has increased enormously, making it difficult to carry out sufficiently thorough investigations in even the minimum number of cases specified by the law. Nevertheless, it would be possible to eliminate the shortcomings mentioned here and in the following sections of the report by improving the Anticorruption Law and control of its implementation. The Anti-corruption Law has an extremely important and positive role in regulating the activities of public officials in Latvia.

3. The draft law on conflicts of interest

The Anticorruption Framework Document concluded that a new law was necessary – one that would apply a new approach to prevention of corruption and conflicts of interests. The document also concluded that the work of the institutions involved in

fighting corruption had to be improved. On the basis of this document, a government working group drafted the Law on Prevention of Conflicts of Interest in Public Administration and Restrictions on Activities of Public Officials (hereafter referred to as the Law on Conflicts of Interest).[17] At the time of the writing of this report, the draft law had been announced at a meeting of State Secretaries.

The draft Law on Conflicts of Interest basically takes the same approach to regulation of the activities of public officials as the Anticorruption Law. The law specifies a broad and detailed spectrum of restrictions on the activities of public officials and a system for the declarations of these officials. New is the section "Internal prevention of conflicts of interest in government institutions." The objectives of the draft law are "to ensure that public officials perform their duties in the interests of the State and the public, to promote transparency in the activities of such officials and their responsibility to the public" (Section 2, Paragraph 1). The definition of the objectives is broader than that of the Anticorruption Law, which defined the objective as "prevention of conflict-of-interest situations in the performance of duties of public officials."[18]

Section 1 of the draft law defines the term "conflict of interest" as a situation in which a public official, in performing official duties, must make a decision or take part in a decision-making process which affects or may affect the official's material or other personal interests, or those of a kin or business partner. The definition has been significantly narrowed, since a conflict of interest is connected only with the making of decisions or participation in decision-making processes, and not generally with the performance of official duties, as in the Anticorruption Law. This definition is so narrow that even several of the restrictions specified in the law exceed its limits. For example, the section that deals with restrictions on the acceptance of gifts states that it is forbidden for a public official to directly or indirectly accept any gifts whatsoever, except in the cases outlined in the law. This means that the restrictions on the acceptance of gifts are in force even when the official does not take part in any decision-making processes. Here, the logic of the law has been partly confused, because the point of the restrictions is, after all, supposed to be prevention of conflicts of interest.

The draft law places a particular responsibility for prevention of conflicts of interest on the head of an institution (see Section 12, "The responsibilities of the head of an institution in preventing conflicts of interest"). The explanation for this could, perhaps, be

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17 Draft of the Law on Prevention of Conflicts of Interest in Public Administration and Restrictions on the Activities of Public Officials. Published in the public policy site "politika.lv". http://www.politika.lv Last viewed on December 11, 2001.

18 Anticorruption Law. Section 1, Clause 3. *Latvijas Vēstnesis*, October 11, 1995; May 31, 1996; November 4, 1998.

that the head of an institution is the person who is best informed about the specific duties of the officials employed in his institution and best able to identify potential conflicts of interest. However, the head of an institution must assess the possible existence of conflicts of interest by checking the declarations of the public officials employed in his institution. This requirement could, to a certain extent, be purely formal, because the head of an institution has not been provided with any special authorisation for checking the data provided in the declarations. It is also quite possible that the specific conditions of a conflict of interest are not always reflected in the declaration of a public official. For example, an official may have new material interests that would not have been reflected in his last declaration. According to the draft law, the auditing of declarations is also to be included in the responsibilities of the Anticorruption Bureau, but not the assessment of possible conflicts of interest.

The draft law does not clearly and incontestably specify whether a public official can be considered as being in a conflict of interest even if he or she has observed all of the restrictions set out in Chapter 2 of the law. Individual parts of the law, for example, Section 14, Paragraph 1, which states that an employee must submit written notice to a higher-ranking official or a collegial decision-making institution of any conflict of interest or personal interest or the interest of kin in any specific activity before this activity is carried out, suggest that the law restricts all conflicts of interest. However, questions may arise about situations in which, for example, an official combines his job in a government institution with that of a teaching job, which is permitted by current legislation, but which represents a conflict of interest, as defined in Section 1 of the draft law.

In concluding, a few comments about what would be necessary to ensure that after taking effect the Law on Conflicts of Interest can be successfully incorporated into Latvia's system of corruption prevention. The content of the public official's declaration should be coordinated with the content of the initial declaration and/or tax declarations. The declarations of public officials should contain the same information as the initial declaration and/or tax declarations, but public officials should also be required to provide the additional information that is needed for implementation of the Law on Conflicts of Interest. Furthermore, all public officials should be required to file declarations, as stipulated by the draft law, unlike the rest of the population of which only certain categories are required to file initial and/or tax declarations. Combining the declarations prescribed by the Law on Conflicts of Interest and the tax declarations of public officials could simplify administration and auditing of the declarations.

Since the declarations filed by public officials would in this case be used both for calculating taxes and preventing conflicts of interest and corruption, all declarations filed by officials should be sent not only to the planned Anticorruption Bureau but also to the State Revenue Service. The SRS would conduct tax audits in the same way as it

does in the cases of taxpayers who are not public officials. The Anticorruption Bureau would regularly carry out checks on public officials as well as special checks in cases where violations are suspected.

4. The situation in other countries

Comparisons were carried out with certain aspects of corruption prevention in a number of other countries and the report resorts to these later on when formulating policy recommendations. The purpose of the comparative analysis was not to provide comprehensive information about anticorruption policies in all countries of a certain region. Denmark and the USA were chosen as two countries that apply two different models for controlling conflicts of interest. In Denmark, control of conflicts of interest follows general guidelines, which are to a great extent based on trust in public officials. In the USA, on the other hand, detailed and strict regulations, which are rigorously applied and which include extremely precise and comprehensive restrictions, play an important role. In the second section, which takes a look at property and income declarations, Norway and the USA have been taken as examples.

For a general picture of the situation in a corruption prevention context, the following table shows facts and figures in a number of European countries and the USA, which are important for this policy analysis. Although not all of these countries – Lithuania, Estonia, Denmark, Norway, Italy, France and the USA – have been examined in detail, the most important facts will give at least a general idea.

The situation in other countries

	Latvia	Lithuania	Estonia	Denmark	Norway	Italy	France	USA
Corruption perception level (TI Index 2001 rating)	59	38	28	2	10	29	23	16
Gross national income per capita 1999*	$ 2, 430	$ 2, 640	$ 3, 400	$ 32, 050	$ 33, 470	$ 20, 170	$ 24, 170	$ 31, 910

* Source: The World Bank. 2001 World Development Indicators.

	Latvia	Lithuania	Estonia	Denmark	Norway	Italy	France	USA
Specialised autonomous anticorruption institution(s) with the authority to carry out investigatory operations*	No	Yes	No	No	No	No	Yes**	Yes
Special anticorruption or conflict-of-interest law(s)	Yes	Yes	Yes	No	No	No	No	Yes
Regulation of conflicts of interest	Detailed	Detailed	Detailed	General	General	General	*Missing data*	Detailed
Tax declarations	Income, in individual cases property	*Missing data*	*Missing data*	Income and property	Income and property	*Missing data*	*Missing data*	Income

* Institutions, whose only or main purpose is the prevention of corruption. This does not include anticorruption departments or similar structures within other institutions.

** Without the authority to carry out investigatory operations.

4.1. Denmark[19]

In the Transparency International Corruption Perception Index, Denmark is traditionally found in one of the top spots (in 2000 and 2001 – 2nd position).[20] The low

[19] This chapter includes text from the book: Kalniņš, Valts. "Tiesu vara un korupcija" (Judicial Power and Corruption). Riga (2001).

[20] The 2000 and 2001 Corruption Perception Indices. http://www.transparency.org Last viewed on November 19, 2001.

level of corruption in Denmark has even provoked discussions about why there is so little corruption in this country. The low level of corruption has been attributed to historical, cultural and other factors, but the author of this report is not aware of any in-depth studies on this phenomenon. In the years 1999 to 2000, there were 10 violations of Section 122 of the Danish Criminal Code (active bribery or giving of bribes). Six of these cases ended with sentences from a fine of DKK 940 (at the end of 2001, approximately 71 lats) to a 60-day suspended sentence. There were five violations of Section 144 of the Danish Criminal Code (passive bribery or taking of bribes). The sentences that were pronounced in the active bribery cases suggest that the violations were relatively trivial.[21]

In Denmark, legislative anticorruption measures are fairly limited, and there is no anti-corruption law as such. Here, two of the most important laws are the Public Administration Law[22], which prescribes restrictions that are aimed at preventing conflicts of interest, and the Penal Code, which prescribes liability for various forms of corruption, including bribery.[23] Regulations that can potentially prevent conflicts of interest can be found in other Danish legislation as well. It is a fact, however, that, in practice, conflicts of interest in public administration are not considered a particularly serious problem in Denmark – neither from a legal nor an ethical aspect. Individual restrictions, for example, on combining public service with some other occupation, are applied mainly to prevent public officials from taking on exceedingly great workloads, which could affect their ability to carry out official duties, either due to exhaustion or lack of time.

The Public Administration Law. The Public Administration Law is applicable to all branches of public administration and, in some cases, to specified companies, partnerships, institutions, associations, etc., which cannot be classified as part of public administration (Section 1). In a conflict-of-interest context, Chapter 2 of the law, "Disqualification" (*Inhabilitet*), is important. Section 3, Part 1 reads:

> "Any person acting within the public administration shall be disqualified from any specific matter, if:
>
> 1) such person is himself particularly interested personally or financially in the outcome of the matter or represents or has previously in the selfsame matter represented any person who is thus interested;

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[21] Danish Ministry of Justice, Civil and Police Department. The Danish contribution to the Baltic Sea Task Force Situation Report on Corruption. (2001)

[22] Danish Public Administration Law (Forvaltningloven). Law No. 571, December 19, 1985. www.retsinfo.dk Last viewed on November 19, 2001.

[23] Danish Penal Code (Straffeloven). Law No. 849, September 6, 2000. www.retsinfo.dk Last viewed on November 19, 2001.

2) such person's husband or wife, or any person related by blood or marriage in the direct line of ascent or descent or in the collateral branch as close as first cousin, or any other closely attached person, is particularly interested personally or financially in the outcome of the matter or represents any person who is thus interested;

3) such person takes part in the management of or otherwise is closely related to any company, partnership, association or other private legal entity particularly interested in the outcome of the matter;

4) such matter concerns a complaint about or exercise of the control or supervision of another public authority, and such person previously, when serving with that other authority, has assisted in making a decision or in implementing measures relating to such matters; or

5) circumstances other than those referred to in subsections 1–4 of this section are likely to lead to any doubt about such person's impartiality."

One can see that there are few restrictions, which are spelled out in detail. However, even if the law does not include restrictions that "describe" specific situations, a public official can be disqualified from deciding a matter, if circumstances emerge which are unforeseen by the law, and which can raise doubts about non-affiliation between this person and one of the parties involved. This law, therefore, reaffirms the principle that those who are employed in public administration can not carry out their functions in a conflict-of-interest situation.

Section 3, Part 2 of the law specifies the conditions under which the persons referred to in Part 1 shall not be disqualified: no person as referred to in Part 1 of this section shall be disqualified if, as a consequence of the nature or degree of his interest, of the nature of the matter, or of his functions in connection with consideration of the matter, no risk may be assumed to exist that the decision to be made may be affected by extraneous considerations. Thus, the law sets out the principles which must be considered when reviewing the question of disqualification, but assessment of the concrete circumstances is left almost entirely to those applying the law.

It should be pointed out that similarly defined abstract restrictions can also be found in Latvia's regulatory enactments. For example, Clause 42.4 of the Regulations on the Administrative Acts Procedure states: [In the concrete administrative procedure, the institution shall not be represented by] persons who, in this concrete matter, have, apart from their official duties at the institution, prepared an expertise on or have been in some other way connected with this matter.[24] The rather abstract wording "in some

[24] Cabinet of Ministers Regulation No. 154, Regulations on the Administrative Acts Procedure (adopted on June 13, 1995). *Latvijas Vēstnesis*, July 4, 1995.

other way connected with this matter" has been used here. The Law on Judicial Power, the Latvian Criminal Procedures Code and the Civil Procedures Law also use rather abstract formulations to define the restrictions that apply to judges for the prevention of conflicts of interest.[25] One can conclude that abstractly formulated restrictions on conflicts of interest are not entirely non-existent in Latvian legislation, however, they have hardly been used at all in the Anticorruption Law.

Application of the Ethics Code. The application of abstract regulations is rather complicated and requires in-depth understanding of the reason for the regulation and methods of application. In such cases, standards of ethics, which are prescribed for civil servants and public officials, can prove to be helpful. The professional ethics working group of the Danish Association of Lawyers and Economists has formulated three ways in which ethical values and guidelines can work together with the law in cases where the law does not clearly state what is or is not legal, and, therefore, ethical:

1. Regulations that are contained in laws or administrative decisions may require closer interpretation, which follows from the nature of the circumstances or other considerations. Here, ethically-oriented common sense is frequently employed.

2. If regulations allow the administration to make a decision that is based on common sense, this requires the administration to decide which considerations, including ethical ones, may or, possibly, should be included in appraisal of the matter and how such an appraisal should be carried out.

3. In other cases, typical in administrative work, ethical standards function in a different, more direct and independent way – as operational guidelines.[26]

So seen, ethical and other unwritten standards and principles are not only desirable, but even necessary, to make possible the use of common sense, for example, in applying regulations on disqualification.

Restrictions that apply to specific categories of public officials: police officials and judges. Another way of applying generally formulated requirements of a law is to adopt

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[25] See Law on Judicial Power, Section 14, "Recusal of Judges and Lay Judges"; the Criminal Procedures Code, Section 27, "Circumstances which rule out participation of a judge in adjudication of a criminal case"; the Civil Procedures Law, Section 19, "Removal or recusal of a judge." For example, the Civil Procedures Law states that "a judge shall not have the right to participate in proceedings, if the judge [..] has direct or indirect interest in the outcome of the case, or if there are other circumstances that render objectivity questionable."

[26] "Fagligt etiske principper i offentlig administration." Betænkning afgivet of DJØF's fagligt etiske arbejdsgruppe September 1993. Jurist- og Økonomforbundets Forlag (1993), p. 97.

secondary regulations, for example, for specific groups of public officials. This is why, in Denmark, there are special regulations for certain categories of public officials. It is quite common for Danish police to combine their official duties with other employment. A police official may have another job as long as and to the extent that it does not interfere with the conscientious execution of official duties or damage the respect and trust that a police official must enjoy. Police officials may accept other employment if the following conditions are fulfilled: (a) this employment is not carried out in uniform, (b) it does not involve the use of government premises and materials, including telephones, typewriters, paper etc., (c) business contacts do not take place at the official place of employment or during official working hours, (d) the other employment is not taken into consideration while carrying out official duties, and (e) the other employment is not so demanding that the police official arrives at work tired and unfit to carry out official duties. If a police official wishes to engage in other employment, he or she must file a special form that is sent to the Chief of Police together with an assessment from the direct superior on whether the above requirements will be fulfilled.[27]

There are hardly any specific regulations that restrict the conflicts of interest of Danish judges. This does not mean, however, that in theory and in practice legislation allows judges to carry out their duties in conflict-of-interest situations. Chapter 5 of the Law on Judicial Procedure (*Retsplejeloven*) specifies the cases in which judicial persons must withdraw themselves from a case. This chapter sets out general procedural standards similar to those which can be found in the laws of many countries. For example, no person shall have the right to act as judge in a case where such person is one of the parties involved, or has personal interest in the outcome of the case, or has sustained damage or injury in the case (Section 60, Paragraph 1, Clause 1).[28]

Judges are permitted to hold other jobs and receive remuneration for such jobs, but prior to accepting another job, a judge must request permission from the Court Presidents' Council (*Præsidentsrådet*). However, when deciding whether or not to give permission, the Council focuses mainly on whether the additional work might not require too much of the judge's time.

At the end of each year, judges submit declarations to the Courts Administration (*Domstolestyrelsen*). These are examined, but they are not published. The Courts Administration also focuses mainly on the volume of work taken on by each judge. This is important because some judges have quite a backlog of cases pending review.

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[27] Rigspolitichefen. Kundgørelse om polititjenstemænds bibeskæftigelse. Kundgørelse I nr. 7. Den 29. december 1993. Hj.nr. 1993-2020-21.

[28] Danish Law on Judicial Procedure (*Retsplejeloven*). http://www.synopsis.dk Last viewed on November 19, 2001.

Section 47B of the Law on Judicial Procedure states that the Court President may, if necessary, request that a judge provide explanations about the amount of time spent on other employment and the income gained from such employment over a specific period of time. Such explanations may also be requested about income that is planned in the future.[29] The accuracy of the information provided in the declaration is not routinely checked. This would be done only if there were a specific reason to doubt the truth of the information.[30]

Box 3.
Danish Law on Judicial Procedure regarding declarations of judges

Section 47A. Each year by February 1, a judge shall file a declaration on gainful employment which has been carried out during the previous calendar year in addition to official duties. The declaration shall comprise information about the nature of the employment and the employer. Information on cases of arbitration [conducted by the judge – *author's note*] need not include the names of the parties, but shall indicate the names of the attorneys or other persons representing the parties, and explain how the judge was appointed. In addition, the judge shall file a declaration on income from each additional employment.

Part 2. In courts that are presided over by Presidents, declarations must be submitted to the President, in all other courts – to the President of the respective Regional Court. The Presidents of the Regional Courts, the Copenhagen Municipal Court, the Århus, Odense, Ålborg and Roskilde courts, and the President and Vice-President of the Maritime Court and Commercial Court shall submit their declarations to the President of the Supreme Court.

Part 3. The right of access to documents does not apply to the declarations specified in Part 1.

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[29] Ibid.

[30] Author's interview with Danish Eastern Regional Court judge Hans Henrik Brydensholt. Copenhagen, October 16, 2001.

Conclusions regarding Denmark

- Regulation of conflicts of interest in Denmark (in a narrow as well as in a broad sense) is decentralised and, to a much greater extent than in Latvia, based on trust in public officials. At the same time, it is possibly more effective than the system in Latvia. From this, one concludes that, as public administration is developed in Latvia, it should perhaps focus on a model with a distinctly negative attitude to conflicts of interest.

- The Danish model is suitable for a well-paid public administration, where the motivation of an individual to improve his or her material situation through unethical or illegal means is sensibly restricted.

- The Danish method of dealing with judges' conflicts of interest is to such a great extent based on trust in the professionalism and integrity of the judges that a similar approach can, at least for the present, not be applied in Latvia.

- The greatest advantage of the Danish model is that concrete restrictions do not exclude the possibility of taking action against conflicts of interest not specifically defined in the law. For the future development of methods for the control of conflicts of interest in Latvia, it would be important to learn how public officials in Denmark reach concrete decisions in issues connected with conflicts of interest and other ethical aspects, when the law provides only general guidelines.

4.2. The USA: the New York City example

Because the United States have a federal system, conflicts of interest are regulated in different ways by federal authorities and by state and municipal authorities. Since it is not possible in this chapter to examine all of the models applied in the USA, the report will focus on one example – New York City.

The main legal source for regulation of conflicts of interest is the New York City Charter. Conflicts of interest are treated in Chapter 68 of the Charter, which is entitled "Conflicts of Interest." In the United States, city governments receive their legal authority from the states in which they are located. The legal framework within which the City of New York may conduct its affairs is provided by the Home Rule provisions of the State Constitution and the Municipal Home Rule Law. The New York City Charter is the basic document that defines organisation, power, functions, and essential procedures and policies of City government.[31]

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[31] New York City Charter Revision Commission. http://www.nyc.gov/html/charter/html/about/html Last viewed on November 20, 2001.

New York City Charter. Chapter 68. Chapter 68 (also known as the Ethics Code) of the New York City Charter was enacted in 1989. It prescribes comprehensive standards and prohibitions for the financial conduct and relations of public employees both in and out of the workplace. The Code also prescribes standards for the behaviour, activities and relations appropriate for public servants' spouses and unemancipated children. Violation of the rules is punishable by civil and criminal sanctions, among them forfeiture of office, fines and incarceration.[32]

Conflicts of Interest. Chapter 2604 of the New York City Charter states that no public servant shall have an interest in a firm which such public servant knows is engaged in business dealings with the agency served by such public servant, and that no regular employee shall have an interest in a firm which such employee knows is engaged in business dealings with the City, except if such interest is in a firm whose shares are publicly traded, as defined by the rules of the Board (Section 2604, Paragraph a, Clause 1 a and b).

The Charter also prohibits a whole row of specific activities. For example, a public servant, who has an interest in a firm, which is not prohibited by the Charter, shall not take any action as a public servant particularly affecting that interest. This does not, however, apply to certain groups of officials. For example, in the case of elected officials, such actions are not prohibited, provided the elected official discloses such interest to the Conflicts of Interest Board, and this appears on the official records of the Council or the Board of Estimate in the case of matters before those bodies (Section 2604, Paragraph b, Clause 1).

In addition to specific prohibitions, the Charter also includes "catch-all" prohibitions, which must encompass all unacceptable situations. No public servant is permitted to engage in any business, transaction or private employment, or have any financial or other private interest, which is in conflict with the proper discharge of his or her official duties (Section 2604, Paragraph b, Clause 2). No public servant is permitted to use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege, or other private personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant (Section 2604, Paragraph b, Clause 3).

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[32] Bigelow, Page E., "From Norms to Rules: Regulating the Outside Interests of Public Officials," in Mauro, Frank J. and Benjamin, Gerald (eds.). *Restructuring New York City Government: The Reemergence of Municipal Reform.* New York, Academy of Political Science (1989), pp. 141–57. Here, taken from Anechiarico, Frank and Jacobs, James B. *The Pursuit of Absolute Integrity. How Corruption Control Makes Government Ineffective.* The University of Chicago Press (1996), p. 50.

Political payments. Chapter 68 of the Charter also restricts political patronage, for, example, donations made by public servants to political candidates in return for career benefits. Section 2604, Paragraph b, Clause 11 states that no public servant shall, directly or indirectly, compel, induce or request any person to pay any political assessment, subscription or contribution, under threat of prejudice to or promise of or to secure advantage in rank, compensation or other job-related status or function. Public servants are also prohibited to pay or promise any political assessment, subscription or contribution in consideration of having been or being nominated, elected or employed as a public servant, or to secure advantage in rank, compensation or other job-related status or function. A public servant shall also not compel, induce or request any subordinate public servant to pay any political assessment, subscription or contribution.

Post-employment restrictions. A number of restrictions pertain to former public service employees and regulate post-service employment. For example, no person who has served as a public servant may appear, whether paid or unpaid, before the city, or receive compensation for any services rendered in relation to any particular matter, involving the same party or parties, with respect to which particular matter such person has participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities (Section 2604, Paragraph d, Clause 4).

Enforcement of restrictions. The Conflicts of Interest Board is responsible for enforcing Chapter 68 of the New York City Charter. The Board, which consists of five members, has a wide array of functions: (1) elaboration of secondary rules, (2) training and education, (3) advisory opinions, (4) administration of financial disclosures, (5) review of complaints, (6) instigation of conduct investigations etc.

Each year, the Conflicts of Interest Board responds to about four hundred formal requests for an opinion and about a thousand telephone calls from persons seeking informal and confidential advice. Even if Chapter 68 prohibits certain conduct, under certain circumstances the Board may issue a waiver if it finds that this conduct does not conflict or interfere with official duties. However, in order to obtain permission, the head of the public employee's agency must submit written approval, explaining in detail why such conduct would not conflict with official duties.[33]

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[33] Anechiarico, Frank and James B. Jacobs. *The Pursuit of Absolute Integrity. How Corruption Control Makes Government Ineffective*. The University of Chicago Press (1996), p. 52.

Box 4.
New York City Conflicts of Interest Board enforcement precedents[34]

The New York City Conflicts of Interest Board considers cases brought before it involving violations which have to do with situations in which public employees or officials have, in carrying out their official duties, been influenced by personal considerations. The following are three examples of violations that fall into the category of misuse of office.

A member of the New York City Housing Authority, Kalman Finkel, was fined $2,250 for using his office to help to obtain a computer programmer's job for his daughter with Interboro Systems Corp., a company with a $4.3 million contract with the Housing Authority. Two weeks after faxing to Interboro his daughter's resume, Mr. Finkel voted to increase Interboro's contract with the Authority by $52,408. Mr. Finkel claimed that the vote was inadvertent and that he had not realised that Interboro was the same firm to which he had sent his daughter's resume. Interboro hired Mr. Finkel's daughter. *COIB v. Kalman, Finkel,* COIB Case No. 99-199(2001).

The Board fined a former attorney from the City Commission on Human Rights $2,000 for investigating a discrimination case involving her mother and recommending agency action (finding a probable cause to believe that her mother had suffered discrimination) without disclosing the familial relationship to her superiors. The Board strongly disapproved the misuse of prosecutorial discretion in favour of a family member. *COIB v. Marisa Rieue*, COIB Case No. 2000-5 (2001).

In *COIB v. Frances T. Vella-Marone*, COIB Case No. 98-169 (2000), the Board fined Frances T. Vella-Marrone, a former School Construction Authority official, $5,000 for using her position to obtain a job for her husband at her agency and for attempting to obtain a promotion for him in 1996 and 1997.

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[34] Conflicts of Interest Board Enforcement Precedents http://www.ci.nyc.us/html/conflicts/pdf/enforcementnov.pdf Last viewed on November 20, 2001.

Criticism. Frank Anechiarico and James B. Jacobs describe a series of negative effects that are brought about by rigorous laws on conflicts of interest:[35]

- It is possible that conflict-of-interest laws do not reduce hard-core criminal activities such as bribery and fraud.
- The ethics laws do not substantially increase the risk for corrupt officials of "getting caught," because dishonest officials will have no compunction about lying on their financial disclosure forms.
- Although the ethics laws are comprehensive, they are only minimally enforced.
- The ethics law has the potential to have a greater effect on "honest graft" – previously lawful self-dealing and opportunity-taking – than on hard-core graft. The regulations can have an effect on two types of employees: (1) those who hitherto lived by the credo that everything is permissible, which is not explicitly prohibited; (2) those who did not realise that there was anything wrong with gaining personal benefit from economic opportunities that arise in the course of public employment.
- Stringent regulations prevent some qualified persons from entering public service or motivate those who are employed in public service to leave.
- Rigorous conflict-of-interest rules create governing problems for public officials.
- Strict laws lead to defensive decision-making and, in general, slow down the decision-making process.
- Ethics laws can have a negative impact on morale. Public employees perceive them as presuming their guilt until proven otherwise. They become unenthusiastic and ineffective in carrying out their responsibilities.
- The large number of requests (e.g., if an official wishes to accept an offer of employment) submitted to the Conflicts of Interest Board leads to backlogs and delays, and this, in turn, leads to additional costs.

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[35] Anechiarico, Frank and James B. Jacobs. *The Pursuit of Absolute Integrity. How Corruption Control Makes Government Ineffective.* The University of Chicago Press (1996), pp. 56–62.

5. Recommendations for Latvia

Conflict-of-interest standards.[36] The law should clearly indicate how rigorous the conflict-of-interest standards that are applied to public officials should be. There could be three possible levels of standards. The first and lowest level – a situation in which legislation prescribes certain restrictions, which prohibit the most serious and potentially damaging conflicts of interest. This is how the current Anticorruption Law has usually been applied – with focus on the control of compliance with specific restrictions and prohibitions.[37] The greatest flaw in this approach is that specific restrictions may not include certain serious conflicts of interest.

A higher level of standards would be the prohibition of all real conflicts of interest in accordance with a specific definition of such conflicts. The Anticorruption Law defines conflict of interest as a situation in which a public official must perform official duties in a case where, parallel to public interests, there are also the personal material or other interests of the public official or the kin of such official (Section 3, Paragraph 2).[38] In order to establish such a standard, the law should be supplemented with the following text: "A conflict of interest exists even in such cases where a public official has observed the restrictions and prohibitions prescribed by this law, but where a conflict of interest has occurred."

The purpose of this supplement would be to prevent such interpretation of the restrictions and prohibitions, which would permit a conflict of interest. In this case, the purpose

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[36] See: "Repše un interešu konflikta latiņa" (Repše and the conflict-of-interest threshold), which has been partly used here as well. Public policy site "politika.lv". http://www.politika.lv Last viewed on November 25, 2001.

[37] This is also the gist of the Prosecutor General's report on the donation case of the President of the Bank of Latvia, which focuses on restrictions on the acceptance of gifts and their grammatical formulations.

[38] In continuing with the example of the President of the Bank of Latvia, let us imagine him exercising his authority in a matter which affects the interests of a donor. This situation would be a conflict of interest, because the president might have a personal interest in helping this donor. Of course, the nature of the interest would have to be such that it could potentially conflict with public interest. For example, the donor's interest in the President of the Bank of Latvia acting to stabilise the national economy could not produce a conflict of interest.
The prosecutors apparently feel that it is not possible to apply a broader interpretation of conflict of interest in this case because the law contains a provision which applies specifically to the acceptance of gifts. If one wishes to prevent conflicts of interest in all possible situations, the law will have to make it clear that specific restrictions may not be interpreted in such a way as to limit the prevention of conflicts of interest. In such a case, a public official would not be permitted to accept either gifts that conflict with specific restrictions on the acceptance of gifts, or other gifts that can lead to a conflict of interest.

of specific restrictions and prohibitions would be simply to bring special attention to the activities that most frequently and most unquestionably lead to a conflict of interest. For example, even if a public official demands gifts that are not prohibited by the restrictions on acceptance of gifts, such conduct would be unlawful, if it led to the conflict of interest situation defined in Section 3, Paragraph 2.

The third and the most rigorous approach, which has not been defined in the Anti-corruption Law, would be to prohibit even such situations in which a public official may only appear to be in a conflict-of-interest situation.

The definition of conflict of interest and its flexible application. A conflict of interest and the specific circumstances that constitute a conflict of interest must be formulated to encompass all conflicts of interest that may affect a public official's conduct. At the same time, the law must allow an official to continue working, if, despite certain circumstances that may suggest a conflict of interest, there are no grounds to believe that the conduct of the official may be influenced by inappropriate considerations.

The problem of comprehensive conflict-of-interest criteria in the texts of regulative enactments has been partially solved in Section 37, "Persons who shall not represent an agency," of the Administrative Procedures Law. Pursuant to this provision of the law, such persons may not represent an agency or act upon behalf of an agency in any administrative proceedings: 1) who are or may be in a conflict of interest; 2) of whose objectivity there is reasonable doubt; 3) to whom other restrictions of the law are applicable.[39]

To ensure that the definition of conflict of interest that is found in Section 3, Paragraph 2 of the Anticorruption Law incorporates possible conflicts of interest as comprehensively as possible, it should be supplemented with the following: "A conflict of interest is a situation in which a public official must perform official duties in a case where, parallel to public interests, there are also the personal material or other interests of the public official or the kin of such official or <u>any other person closely connected with such official</u>" (recommended supplement is underlined).

The comprehensive phrase "any other person closely connected with such official" should be included because a serious conflict of interest can occur, for example, if a public official acts in the interests of a business partner or a close friend. It is neither possible nor expedient to include a list of all possible "closely connected persons" in the law, because such a list could never be complete. The question of whether a person is "closely connected" with a public official would have to be resolved by a competent institution, which would be specifically charged with evaluating conflicts of interest

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[39] Administrative Procedures Law. *Latvijas Vēstnesis*, November 14, 2001.

and promoting systematic and consistent application of the Anticorruption Law or the Law on Conflicts of Interest. If this were the case, it would no longer be possible for public officials to act in the interests of long-standing business partners or close friends without violating the law simply because business partners or close friends are not mentioned in the law.

A specialised conflict-of-interest institution. In order to make qualified judgements about whether or not a conflict of interest exists and to enforce consistent application of the law in government agencies, specially trained experts are required. Such specific expertise could be acquired at an institution that specialises in conflicts of interest, for example, a special department of the Anticorruption Bureau, which would deal with all conflict-of-interest cases.

It is important to provide an opportunity for public officials to receive an expert opinion on the likelihood of a conflict of interest before such officials or their subordinates engage in specific activities. For example, if an official has doubts about whether he or she or a subordinate may make a decision, the official could first consult the yet-to-be-established Anticorruption Bureau. The Law on the Anticorruption Bureau should include the provision that the recommendations of the Bureau are binding for public officials.

The conflict-of-interest institution would also review complaints regarding officials who may possibly be involved in a conflict of interest. The institution would be authorised to decide when, regardless of specific conflict-of-interest restrictions, there is no ground to believe that private interests could influence the conduct of an official. In other cases, this institution could decide whether, despite the fact that a certain conflict-of-interest situation is not defined by the law, an official is, nevertheless, involved in a conflict of interest.

The Anticorruption Law or the Law on Conflicts of Interest should include the following text: "Should any public official suspect that he or she is at risk of becoming involved in a conflict of interest, it is the obligation of such official to submit a written request for counsel to the Anticorruption Bureau. Such request shall also be made, should any public official suspect that a subordinate may be at risk of becoming involved in a conflict of interest. The Anticorruption Bureau shall also be charged with examining all other cases in which any public official is suspected of being in a conflict of interest and giving its conclusions."

The duties of the heads of agencies. The law should explicitly charge heads of agencies with the duty to (1) regularly examine the declarations of the public officials employed by the agency and (2) check to make sure that a public official is not involved in a conflict of interest if information has been received about such a possibility.

II. DECLARATION OF ASSETS AND INCOME

In public debates in Latvia, experts, politicians and journalists have frequently spoken of the so-called **initial declaration** of assets (alternatively – zero declaration) as an effective anticorruption instrument. As can be understood from a number of public debates on the topic, the idea is to prevent situations in which corrupt officials, whose property value greatly exceeds declared income, can cite previous, unverifiable sources of income (such as growing flowers or selling pork during the Soviet era) to explain the origin of their property. In order to prevent this type of situation, such persons would be required to declare all property that they possess at a certain point. To make it more difficult to hide property under the name of other persons, declarations would have to be filed not only by public officials, but by the whole population. Once such initial declarations had been filed, government institutions would be able to monitor all increases of personal property. What is described here is not a technically precise description of the model, but rather the widespread public perception of the project.

In this chapter, the report analyses the prospects that this idea – the initial declaration of assets – might have, the role that it might play in preventing corruption, and the possible alternatives. To carry out such an analysis, it is first important to understand the reason and the justification for the State's desire to obtain information about the property and income of its population. As in the chapter on control of conflicts of interest, in this chapter, too, there will be examples taken from other countries – Norway and the USA.

If one fully accepts the premise that private property is sacred, there is no reason for the State to know who owns what. Nevertheless, there are two tasks that almost every modern nation must perform – it must collect taxes to finance its existence and it must enforce its laws.

For the first task, there are two alternatives: (1) the State may collect a certain amount of financial resources from the entire population or from individual population groups regardless of the value of their property or size of income, or (2) the State may collect a certain percentage of the population's income and property. Collecting a fixed sum from the entire population involves a number of difficulties: many would consider the system unfair, since the same sum would be paid by rich and poor alike; fixing low payments

would decrease State revenues, while raising the sums would place an unbearable tax burden on the less affluent part of the population. These difficulties can be avoided, if tax rates are set to represent a certain percentage of an individual's property and income. Almost all modern nations have chosen this as their main model for calculating taxes. However, in this case, the State must "infringe on sacred ground" and determine how much each person owns and earns. The question of tax declarations will be considered later in this chapter, because this is one area in which many countries, including Latvia, have the most experience where declaration of assets and income is concerned.

For the second task – enforcement of legislation – there are many different methods. Many violations of the law – theft, drug trade, fraud, bribery and others – are committed with the intent of obtaining illegal property. Of course, attempts can be made to expose crimes by methods of detection, but this can be very difficult or even impossible to do. However, the State can reduce the potential for criminal activities by demanding that the people declare the origin of their property. If the declaration system is effective, it becomes difficult for persons involved in criminal activities, among them individuals involved in corruption, to legalise and use wealth that has been illegally accumulated. This reduces the motivation to carry out criminal activities.

The most complex problem concerns the extent to which the State is entitled to request information from all its inhabitants regarding their property and sources of income as a preventive measure against the use of illegally acquired resources. Without delving into the finer details of this problem, one can conclude that one possible solution would be to reduce the circle of those who must file declarations to specific high-risk groups, whose potential for illegal activities poses a particular threat to the State. One such group are, for instance, public officials. Public officials can be required to disclose not only information about property and income, but also about other employment and other commitments, which can potentially affect the official's ability and desire to carry out official duties in the public interest.

At the beginning of this chapter, the current property and income declaration system in Latvia is examined with special emphasis on its strengths and weaknesses in an anti-corruption context. At the end of the chapter, options for the future are explored, with a look at the possible gains and losses that would be involved.

1. The current situation in Latvia

In Latvia, the obligation of natural persons to declare their income and assets is generally defined in three laws: the Anticorruption Law (which applies to public officials), the Law on Taxes and Duties, and the Law on Personal Income Tax (the last two apply to all taxpayers).

The Anticorruption Law. Section 22, Paragraph 1 of the Anticorruption Law states: "To facilitate control of how public officials observe the regulations of this law, such officials are obliged to submit to the State Revenue Service, at the times appointed by this law, the following declarations: 1) the public official's declaration, which must be submitted upon assuming office; 2) the annual public official's declaration; 3) the public official's declaration, which must be submitted upon termination of official duties; 4) the public official's declaration for the Public Prosecutor's Office and intelligence and national security agencies."

It follows that the State has imposed on public officials the obligation of declaration as a preventive measure against violations of the law, i.e. "in order to control how public officials observe the regulations of this law." This goal and the instrument chosen to achieve the goal – the public official's declaration – are not likely to raise any human rights objections. This lets us concentrate on other questions: (1) are the restrictions and prohibitions of the Anticorruption Law in themselves enough to achieve the objectives of this law, and (2) are the content, submission procedure and control system of the public official's declaration adequate "for controlling how public officials observe the regulations of this law."

The Anticorruption Law has a quite a number of flaws, both in regard to achievement of the objectives of the law, and to the adequacy of the content of the declaration for purposes of control. Here, the report will mention only a few. For example, the requirements of the law do not adequately ensure transparency regarding the activities of public officials, which is one of the proclaimed objectives of the law (see Section 1, Clause 1). The obligation to file an income and property declaration does not prevent situations where property is registered in the name of one person but is actually possessed or used by other persons. One of the simplest ways of making sure that the information contained in the declaration of a public official does not provide the facts that are needed to achieve the objectives of the Anticorruption Law is to register property in the name of other persons. For example, if person X wants to give *Saeima* deputy Y a bribe in the form of an automobile, person X can keep the automobile registered in his own name or in the name of a third person, but place it at the disposal of deputy Y. In accordance with the requirements of the Anticorruption Law, deputy Y does not have to declare this automobile.[40]

The first time that a public official's declaration is filed, savings may be declared without indicating the source of the money. This makes it possible for dishonest officials to declare non-existent sums of money and *de facto* use the declaration to legalise future

[40] The declaration of a public official must include such transport vehicles as must be registered with state authorities and which are the property of the official submitting the declaration (Anticorruption Law. Section 23, Paragraph 2, Clause 2).

illegal income. From this aspect, the declarations of public officials are inadequate for the purpose of controlling how public officials observe the regulations of the Anti-corruption Law.

There is a whole row of other shortcomings due to which the declarations that public officials file in accordance with the Anticorruption Law do not provide the information that is needed to make sure that a public official has observed all of the restrictions imposed by law.

The Law on Taxes and Duties. A much larger part of the population than just public officials is obliged to pay taxes in one form or another. The income tax, which is made up of personal income tax and corporate income tax (Section 4, Paragraph 1 of the Law on Taxes and Duties) is of crucial importance here.

The Law on Taxes and Duties prescribes a whole series of obligations for natural and legal persons, which relate to their income and their property.[41] For example, the taxpayer is obliged to calculate the sums that must be paid in taxes, to pay taxes and duties in full by the appointed deadline, to submit to the tax authorities, in writing or electronically, the declarations, reports or tax calculations that are required by the respective tax laws, etc. (Section 15, Paragraph 1 of the Law on Taxes and Duties). Section 15, Paragraph 2 of the same law prescribes additional obligations for natural persons. One of these is the obligation to save written records issued by the place of employment, which indicate the taxes that have been paid by the employer (Section 15, Paragraph 2, Clause 3).

The law also places certain restrictions on the use of private assets. For example, Section 30 of the Law on Taxes and Duties prescribes restrictions on the use of cash by legal persons.

One can see that that the law determines various ways in which the State can restrict the rights of private individuals to operate freely and at their own discretion with their property, and that it gives the State the right to request information about the property of private individuals. Of course, the purpose of the restrictions prescribed by this law is not connected with the prevention of corruption.

The Law on Personal Income Tax. The Law on Personal Income Tax defines three types of declarations: a declaration of income for the tax year, specifications concerning declaration of income for the tax year, and a supplementary declaration.[42]

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41 The Law on Taxes and Duties. *Latvijas Vēstnesis*, February 18, 1995; June 21, 1996; November 28, 1997; December 18, 1997; July 3, 1998; October 28, 1998; November 5, 1998; December 8, 1999; May 3, 2000; December 29, 2000; March 21, 2001; May 22, 2001.

42 The Law on Personal Income Tax. *Ziņotājs*, June 10, 1993. *Latvijas Vēstnesis*, January 19, 1994; November 5, 1994; March 4, 1995; June 20, 1996; March 13, 1996; January 3, 1997; October 14, 1997; December 5, 1997; December 15, 1999; February 9, 2000; December 14, 2000; December 7, 2001.

The income declaration for the tax year contains all income earned by the taxpayer during the taxation period (the calendar year), including tax-exempt income, if the total sum exceeds the annual tax-exempt minimum. According to the law, a declaration of income must be filed by all domestic taxpayers, with the exception of certain categories of persons, which are defined in Section 20, "Income declaration privileges," of the Law on Personal Income Tax.

In certain cases, the State Revenue Service may request specifications regarding the income declaration, as well as a supplementary declaration. Section 22, Paragraph 3, "Declaration control and calculation of taxable income," of the Law on Personal Income Tax states that: "If the taxpayer's declared income or the income that is indicated in statements (reports) that are at the disposal of the State Revenue Service do not correspond to the taxpayer's expenditures during the tax year, the State Revenue Service shall issue a written warning to the taxpayer, informing that the payable sum shall be determined on the basis of the calculations that are outlined in Paragraph 2 of this Section. Before the indicated deadline, the taxpayer shall submit to the State Revenue Service the following:

1) a supplementary declaration (in compliance with the declaration form that has been approved by the Cabinet of Ministers) showing income, annuities, cash and other savings, properties and fluctuations in the value thereof (hereafter – supplementary declaration);

2) a declaration of income for the tax year, if such has not been filed pursuant to the procedures prescribed by this law;

3) specifications concerning the declaration of income for the tax year, if requested by the State Revenue Service."

Paragraph 4 of the same section prescribes how the State Revenue Service shall determine property value and enlargement: "In determining the value and increase in value of the taxpayer's property, as well as enlargement of the property during the period in question, the State Revenue Service shall apply data obtained from the Company Registry, the Department of Traffic Safety, the Land Registry and other state registries, as well as the taxpayer's supplementary declaration together with attached documents and receipts which confirm the taxpayer's earnings and expenditures. Only those documents and receipts for earnings and expenditures (duplicates of the submitted documents), which have been presented (submitted) together with the annual income declaration, the specifications, and the supplementary declaration may be used to contest the tax sum."

In order to assess how effective the declarations prescribed by the Law on Personal Income Tax actually are, one would first have to define the objectives that they should achieve – strictly speaking, these are the objectives that are set out in the law. The

objective of the Law on Personal Income Tax is apparently to ensure the levy of personal income tax on the income of all natural persons. Therefore, one would have to assess whether, to what extent and how the declarations make it possible to avoid revealing all taxable income. However, the object of this analysis is not tax collection.

The declarations can also be assessed from a different aspect – the extent to which the existing income declaration system fulfils or – to be more accurate – could, with certain amendments, fulfil the functions that should be fulfilled by an initial or zero declaration in a corruption prevention context. The idea of the initial declaration gained popularity in Latvia not so much as a way of improving tax collection, but rather as a way of making it possible for law enforcement authorities to obtain complete information about a person's financial situation at any given moment. However, an initial declaration would make it possible to limit not only legalisation of illegally obtained funds, but also the concealment of taxable income. It is clear that the use of declarations for tax purposes and for limiting criminal activities can be two sides of the same coin in terms of results. In theory, achieving one of these goals would almost automatically contribute to achieving the other as well.

However, the declaration system or systems that have been illustrated here are not sufficiently effective to achieve a single one of the objectives of the respective laws. The declarations do not help to uncover all of the information that is necessary to meet the requirements of the law. The declarations that are used for tax purposes and the mechanism of their application do not make it possible for the State to obtain complete information about the income of natural persons, which is a requirement of the law. Neither do the declarations prescribed for public officials by the Anticorruption Law reveal all of the information that would be needed to achieve the objectives of the law.

When examining the flaws of the Law on Personal Income Tax, it is important to distinguish between flaws in the text of the law and flaws in enforcement of the law. As a result of insufficient publicity, it is quite likely that a significant part of the population does not even know about its obligation to file a declaration of income for each tax year. This flaw concerns mainly enforcement of this law, but it should be considered when another declaration system is introduced for the purpose of preventing corruption or other criminal activities.

The State Revenue Service can request a supplementary declaration only if "the taxpayer's declared income or income that is indicated in the statements (reports) that are at the disposal of the State Revenue Service do not correspond to the taxpayer's expenditures during the tax year."[43] This means that the State Revenue Service can obtain more or less complete information about a person's assets at a given moment only

[43] Law on Personal Income Tax, Section 22, Paragraph 3. *Latvijas Vēstnesis*, December 15, 1999.

when it is already clear from the information available to the SRS that income does not correspond to expenditures. Such a conclusion is possible only if there is information about a person's previous assets, but such information can only be obtained, when a discrepancy has been uncovered. A vicious circle takes shape. Since supplementary declarations must be filed rather selectively – only in the aforementioned cases – these declarations cannot provide complete information about the assets that are at the disposal of the population. This is one more reason why – without amendments – the current declaration system cannot fulfil the functions of the initial declaration.

As in the case of the public official's declaration, it is possible in the supplementary declaration to declare savings and, if necessary, indicate earlier and unverifiable sources for these savings. Another problem is that the supplementary declaration must indicate cash savings and property at the beginning of the tax year, which makes it difficult to determine changes in assets during the tax year. Furthermore, the declaration does not provide all of the necessary information about a person's property and income even at the beginning of the tax year.

2. The situation in other countries

No European country is known to have introduced a comprehensive declaration of assets for the purpose of preventing a certain type of criminal offense. Other corruption experts have come to similar conclusions. Corruption prevention consultant Bertrand de Speville has written the following about initial declaration of assets: "This proposal is something new and, as far as I have been able to determine, quite unique. None of the countries in Europe have this type of declaration of assets, although some of them do demand declaration of assets (usually for a certain minimum value) for the purpose of tax calculation."[44]

In other countries, there are usually two main types of declarations: (1) various types of tax declarations and (2) various types of declarations for specific groups of officials. Here, the report will look at two examples. The first one is the Norwegian tax declaration, which the taxpayers in this country file each year and which provides a complete picture of a person's assets and income – actually carrying out the function of a yearly "initial declaration." In this particular case, one of the Scandinavian countries has been chosen deliberately, because in these countries (in Sweden and Denmark, as well) almost complete information is available about assets and income of the population.

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[44] De Speville, Bertrand. "Zero declaration. The concept of initial declaration of assets." Paper presented at a seminar on the introduction of an initial declaration of assets and the principle of legal presumption in Latvia, p. 2. Riga. September 12–13, 2001.

The second example is the public officers' declaration system in New York State. This system is very detailed, and its purpose is to establish all possible circumstances that might affect the integrity of a public officer or result in a conflict of interest. An analysis of this system can show us which instruments are employed by the State of New York in order to accomplish what is only partly accomplished by the enforcement system of the Latvian Anticorruption Law.

2.1. Tax declarations: the Norwegian example

The most extensive tax declarations can be found in some of the Scandinavian countries. In Norway, they are called self-declarations (*selvangivelse*) and they encompass almost all possible forms of assets and income. Although all persons are not required to file the self-declaration (at least not in its complete form), successful administration has ensured rather complete official registration of property in Norway.

The following is a summary of the information that had to be provided in the self-declaration for the year 2000 by wage earners, pensioners etc. The declarations had to show all income that had been gained in the year for which the declaration was filed, and all assets that were owned by the person filing the declaration at the end of the same year.

- **Wages or salary and other benefits.** This comprises all income from paid employment, including such benefits as use of a company car and surplus from reimbursements for job-related expenses (for example, if reimbursement exceeds the actual sums spent on an assignment, the surplus can be taxed).
- **Pensions, job-related pension benefits, etc.**
- **Support benefits, child support, etc.**
- **Income from entrepreneurial activities.** This includes farming, gardening, forestry, fishing and other sources of income from entrepreneurial activities.
- **Houses and other real estate.** This includes all forms of immobile property that exist in Norway, as well as income from this property, including profits from the sale of real estate.
- **Income from capital, bank deposits, securities, etc.** This includes both the deposit as well as the interest. Account number and name of the bank or financial institution must be indicated. Precise information must be provided about all securities, both in Norway and abroad: value, interest rates, dividends, profits from sale. All other forms of taxable income must also be declared, such as winnings in certain specified lotteries, profits from currency transactions, etc.

- **The law specifies deductions from taxable income and property, outstanding debts (including interest-rate payments made to the creditor) and losses (e.g., from the sale of shares).**

- **Other assets.** This comprises cash in excess of 3,000 NOK (at the end of 2001, approximately 210 lats), including cheques, notifications of money orders etc. The declaration must indicate the total value of household and movable property in Norway and abroad, if in excess of 100,000 NOK (at the end of 2001, approximately 7,000 lats). The tax value is calculated as a fixed percentage of the insurance value, but if the insurance value is unknown, the person submitting the declaration must give an estimation of the sales value. All recreational boats and mechanical transportation vehicles that were in the possession of the person submitting the declaration at the end of the year must be declared. For declaration purposes, the value of vehicles is calculated by subtracting a fixed percentage (based on the year of manufacture) from the value of a new vehicle. An estimated value must be given for antique transportation vehicles. Campers and mobile homes must be listed separately, as well as motor vehicles, machines and equipment used for entrepreneurial activities, other taxable property (sports and leisure horses, art objects, antique items and other valuables), and the total value of property held abroad, which is taxable in Norway.

- **Other information.** Information must be provided about partners with whom there are mutual children; winnings in lotteries and games; legacies and gifts (with indication of the name, full address and personal code of the legator or donor, as well as a full description of the legacy or gift); all property, debts, income, etc. abroad, even if these are not taxable.[45]

Norwegian tax declarations, the purpose of which is to obtain information about taxable income and assets, actually achieve a registration of assets that is close to complete. This is the goal that Latvia wants to achieve with the initial declaration. Norwegian declarations are filed every year, which makes it possible for the authorities to closely monitor all changes in a person's property.

Compared to Latvia, Norway devotes a lot more attention to making it as simple as possible to fill out the declaration form. The declaration form is sent to persons who must file a declaration. There are columns on the form, which have already been filled out. These contain information that the tax authorities have already received from employers and other sources. However, since the person filing the declaration is the

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[45] Rettledning til selvangivelsen 2000, pp. 8–20. www.skatteetaten.no Last viewed on November 27, 2001.

one who bears responsibility for the accuracy of the information, the declaration form allows corrections to the figures filled in by the tax authorities. Important sources of information for the person filing the declaration are statements from employers, pension funds, banks etc. When the declaration form arrives in the mail, most people are already in possession of documents that show their income and assets.

In the debate about the pros and contras of the initial declaration in Latvia, one of the questions that was raised concerned the sanctions that should be applied to persons who fail to file an initial declaration or to those who provide incorrect information. Among the suggestions were criminal prosecution, administrative sanctions, taxation of undeclared property, confiscation of undeclared property, or combinations of these measures.

In Norway, the main sanctions for failing to file declarations on time or for giving incorrect information are fines and/or additional taxes. A fine must be paid for filing a declaration after the deadline. The size of the fine is calculated in percentages of net assets and total income. If a declaration has not been filed by the time the calculated tax amount is to be announced, the tax authorities are free to determine the value of a person's assets and income according to their own judgement. In such cases, a supplementary tax is also imposed, which is 30% of the calculated tax. However, if a declaration is filed within three weeks of notification of the calculated tax, a fine must be paid instead of the supplementary tax. If incorrect or incomplete information has been declared, a supplementary tax, which is 30% of the tax that would have been evaded by giving false or incomplete information, may be imposed.[46]

2.2. Financial declarations of public officials: the New York State example

New York State Law says: "Every statewide elected official, state officer or employee, member of the legislature, legislative employee and political party chairman and every candidate for statewide elected office or for member of the legislature shall file an annual statement of financial disclosure [..]."[47] The function of these financial disclosures is similar to that of the public official's declaration prescribed by the Anti-corruption Law.

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[46] Ibid., p.1.

[47] New York State Consolidated Laws. Public Officers. Article 4, Section 73-a, Part 2 (a). http://assembly.state.ny.us/leg/?cl=94&a=6 Last viewed on November 28, 2001.

The following is a short summary of the main information that must be provided by the reporting individual:[48]

Office and occupation

- Any office, trusteeship, directorship, partnership or position of any nature, whether compensated or not, held by the reporting individual with any firm, corporation, association, partnership or other organisation other than the State of New York.
- The same information about the spouse or unemancipated child.
- Any occupation, employment, trade, business or profession engaged in by the reporting individual.
- The same information about the spouse or unemancipated child (under certain circumstances).

Interest and political office

- Information must be provided on any interest in excess of $1,000, held by the reporting individual, such individual's spouse or unemancipated child in any contract made or executed by a state or local agency. Such information must also be provided about partnerships or corporations of which any such person is a member, of which 10% or more of the stock is owned (or controlled) by such person.
- Any position that the reporting individual has held as an officer of any political party, as a member of any political party committee, or as a political party district leader must be indicated.
- If the reporting individual practices law, is licensed by the Department of State as a licensed broker or agent, or practices a profession licensed by the Department of Education, such person must give a general description of the principal subject areas of matters undertaken by such person. If such individual practices with a firm or corporation and is partner or shareholder of the firm or corporation, such person must give a general description of principal subject areas of matters undertaken by such firm or corporation.

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[48] Ibid., Article 4, Section 73-a, Part 3.

Investments, gifts, other income

- The name, principal address and general description or nature of the business activity of any entity in which the reporting individual or such individual's spouse has had an investment in excess of $1,000.
- The reporting individual must list each source of gifts in excess of $1,000, which have been received by the reporting individual, such individual's spouse or unemancipated child from the same donor, and indicate the value and nature of each such gift.
- The reporting individual must identify and briefly describe the source of any reimbursements for expenditures in excess of $1,000 from each source.
- The identity and value (if reasonably ascertainable) of each interest held by the reporting individual in a trust, estate or other beneficial interest in excess of $1,000, at any time during the preceding year.
- A description of the terms of, and parties to, any contract, promise or other agreement between the reporting individual and any person, firm or corporation, with respect to the employment of such individual after leaving office or position.
- A description of the terms of and parties to any agreement providing for continuation of payments or benefits to the reporting individual in excess of $1,000 from a previous employer.
- A list of the nature and source of any income in excess of $1,000 from each source, received by the reporting individual and such individual's spouse.
- A list of the sources of any deferred income in excess of $1,000 to be paid to the reporting individual following the close of the calendar year for which the disclosure statement is filed.

Securities, real estate, liabilities

- The type and market value of securities in excess of $1,000 held by the reporting individual or such individual's spouse, including the name of the issuing entity.
- The location, size, general nature, acquisition date, market value and percentage of ownership of any real estate in which any interest in excess of $1,000 is held by the reporting individual or spouse. Also a list of real estate owned by a corporation of which more than 50% of the stock is owned or controlled by the reporting individual or such individual's spouse.
- All debts in excess of $1,000 owed to the reporting individual.

- All liabilities of the reporting individual and such individual's spouse in excess of $5,000, other than liabilities to a relative.

It is more or less obvious that the financial declarations of New York State public officials provide comprehensive information about the financial situation and interests of the reporting individual and his or her closest family members, which could affect discharge of official duties. The logic of the US example is similar to that of the Latvian model. The purpose of both declarations is to obtain information that is as comprehensive as possible on factors that represent a potential for conflict of interest. The difference is in the fact that in their financial statements New York State public officials are required to provide much more information and, in individual cases, in much greater detail. For the improvement of the Latvian conflict of interest control system and declaration model, it would be worth considering control of a number of factors which the financial statements of New York State public officials allow, but which the current Latvian Anticorruption Law does not anticipate. Such factors are, for example, interest in any contract executed by a firm that is owned by the public official, and promised or deferred income.

A more complete control of conflicts of interest could be achieved, if, as is the case in New York State, Latvian public officials were required to indicate their interest in any contract executed by the State or the local government. In addition, it would be quite normal to ask public officials to declare any contract with a firm or corporation in which the official holds or controls a certain percentage of the stock or shares. Section 23, Paragraph 2, Clause 7 of the Anticorruption Law prescribes indication of all companies (corporations) owned by a public official or stock owned in any companies (corporations). But a public official is not asked to indicate any subsidiaries of such companies, nor to declare any contracts that such companies may have with the State or the local government. This is why this information does not always make it possible to identify a conflict of interest.

Financial statements filed in New York State must include three categories of information on promised and deferred income: 1) the terms of any contract, promise or other agreement with respect to employment of the public official after leaving office; 2) the terms of any agreement providing for continuation of payments or benefits to the public official from a prior employer; 3) the sources of any deferred income to be paid to the public official at some time in the future. Promised or deferred payments or opportunities for income can be a serious source of conflict of interest, which is why they should be included in the declarations of Latvian public officials as well.

However, there would be no point in simply transferring all of the requirements of the New York State statement of financial disclosure to the Latvian declaration. Some of them are not very specific and, as a result, not very clear. Their potential for preventing

conflicts of interest is not quite obvious, and they would be difficult to adapt to the legal traditions of Latvian public administration. One such requirement is, for example, the requirement for a practising lawyer or real estate agent who becomes a public official to give a general description of his activities.

The system of financial disclosures is subject to criticism in the USA as well. It has several weak points. The sheer volume and detail of the information that is requested leads to an abundance of incorrect information, which may be intentional or unintentional. Critics point out that the majority of the statements are not checked and that the annual filing procedure has become an almost symbolic act. Checking is made difficult by the great number of statements (more than 12,000 in New York City alone in 1994) and by the great detail of the information, much of which is practically impossible to check. Some public officials in New York are subject to both New York City and New York State requirements regarding financial statements. As a result, a public official may have to file several statements, a fact that some qualified candidates for public office may see as a deterrent factor and a reason to refrain from applying for public office.[49] In Latvia, a similar situation could occur, if public officials were required to file both the public official's declaration and the initial declaration.

3. Options for Latvia

At the time of this policy analysis, there already was a draft law in Latvia on the initial declaration of assets by natural persons. The draft law anticipated the initial declaration as a one-off measure undertaken in order to: 1) improve registration of personal property and income, which is not registered in Latvia's public registries, while improving control of the legitimacy of the income; 2) prevent legalisation of criminally obtained income; 3) facilitate collection of evidence during the investigation of criminal offences.[50]

During the writing of this report, several problems became apparent, which could make it impossible to achieve the objectives of the law. This is why, in this subsection, the analysis will propose for consideration three different models, only one of which complies with the model drafted by the government at the time of the writing of this analysis.

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[49] Anechiarico, Frank and James B. Jacobs. *The Pursuit of Absolute Integrity. How Corruption Control Makes Government Ineffective*. The University of Chicago Press (1996), pp. 53–55.

[50] Law on Initial Declaration of Assets of Natural Persons. Draft law submitted for consideration by the Cabinet of Ministers at the Cabinet committee meeting on November 26, 2001. Section 1. www.mk.gov.lv Last viewed on November 25, 2001.

The first alternative is improvement of the present system of tax declarations, which over a longer period of time could develop into a system of annual declarations similar to the Norwegian model. The second alternative is a one-off initial declaration similar to the one that the government has planned. The third alternative is an initial declaration, which would be completely incorporated into the present system of tax declarations.

3.1. Improvement of the current declaration system

To a large extent, it would be possible to achieve the objectives set out by the draft law on the initial declaration of assets of natural persons if the present system of tax declaration were improved. It follows from the draft law on initial declaration of assets that initial declaration is necessary in order to: 1) improve registration of personal property and income, which is not registered in Latvia's public registries, while improving control of the legitimacy of the income; 2) prevent legalisation of criminally obtained income; 3) facilitate collection of evidence during the investigation of criminal offences.

Registration of the property and income of natural persons is already necessary and is to some extent already being carried out for personal income tax collection purposes. In order to determine whether a person's income is taxable or not, it is already necessary to establish the source of the income. If this system were improved, tax administration could contribute to preventing legalisation of criminally obtained funds. For this reason, the law should stipulate that the information provided in tax declarations can also be used by law enforcement authorities, if there is suspicion of a criminal offence. As a result, both the second and the third goals would be achieved.

However, in order to fully attain the aforementioned goals, a number of changes would have to be made to the tax collection system:

- Flaws in Section 22 of the Law on Personal Income Tax must be corrected. For example, the overly restrictive conditions, which currently must be fulfilled before the SRS can request a supplementary declaration, must be eliminated. The goals of the initial declaration cannot be achieved, if the supplementary declaration (currently, the closest equivalent in Latvia to an initial declaration) can only be requested in cases where there is a discrepancy between the taxpayer's declared income or the income that is indicated in statements (reports) that are at the disposal of the State Revenue Service and the taxpayer's expenditures during the tax year.

- The content of the supplementary declaration, which must be filed pursuant to the Law in Personal Income Tax, must be reconsidered and improved to ensure that it provides all necessary information. Furthermore, criteria must be established for calculation of the value of various forms of property (purchasing value, market value, cadastral value).

- All persons who meet certain criteria must be required to submit a tax declaration. These criteria could be the size of property, or certain types of employment or income. One possibility – declarations would have to be submitted by all persons who have received income from which no personal income tax has been deducted at the time when such income was received. The quintessence of Section 20, "Income declaration privileges" of the Law on Personal Income Tax should basically be preserved.

- Declarations must be filed annually, so that they can be regularly used for calculation of taxes, and so that the State Revenue Service can gradually obtain a complete picture of each individual's property and income.

- In order to reasonably limit the resources needed for a declaration audit, not all declarations would be checked. Auditing would be done selectively: (1) if there is reason to suspect that expenditures exceed income and (2) randomly. This would keep down the costs and, at the same time, subject each person who submits a declaration to the risk of having it checked.

- Fines and/or increased tax rates would be imposed for violation of the rules on submitting declarations. Taxation of undeclared property could be considered in cases where it is not clear that (1) the property in question was taxed when acquired or (2) the property was acquired with income that is not taxable. Criminal prosecution would apply in cases of wilful tax evasion, but this issue would require additional analysis.

- Much more attention should be focused on informing the public about the obligation to submit a declaration. As many as possible of those persons who are required to submit a declaration must be informed of this obligation. For this purpose, a declaration form with explanations should be sent to each person living in Latvia. Furthermore, consultations on how to fill out the declarations should be made widely available.

The main drawback to the approach described here is that it does not give the State a comprehensive picture of the property and savings of individuals at the given moment. This could only be accomplished over a longer period of time. One advantage is that the declaration system could be gradually improved until it was sufficiently effective. It is true that people could continue to explain the origin of declared property by citing unverifiable previous income, but this possibility would also remain in the case of the initial declarations.

Of course, the tax declaration reform described here would only indirectly be connected with the prevention of corruption or any other criminal offence. This is why the first step to take, if this model is to be considered, is a discussion about ways to improve

income-tax administration. If this model were successfully implemented, it would become much more difficult to avoid payment of personal income tax in Latvia. That is why, unlike implementation of the initial declaration, which would appear to be targeted mainly at persons involved in corruption, amendment of the tax declaration system could evoke much greater opposition from the population.

3.2. Introduction of the initial declaration

The Anticorruption Framework Document, which was endorsed by the Cabinet, saw prevention of corruption as the primary objective of the initial declaration.[51] In the new law drafted by a government working group, prevention of corruption is no longer mentioned as an individual objective of the initial declaration. The initial declaration is anticipated as a one-off measure, and the draft law does not explicitly link it to the tax declaration system.

A series of complex measures would have to be carried out in order to successfully implement the initial declaration of assets more or less in the way that has been anticipated in the current version of the law, and to achieve the objectives of this undertaking. Opinions differ about whether these measures are simply very difficult or actually impossible to carry out. If a number of them are carried out only partially, this could completely spoil the effect of the initial declaration.[52] The following are measures that must be carried out if implementation of the initial declaration is to produce the desired effect:

- It must be made certain that there are no categories of assets, which do not have to be declared in the initial declaration, but which also do not have to be registered or declared in any other way. The current draft law does not include several types of property, for example, antique automobiles, which are not registered because they are not in use as motor vehicles, or household property, which can be worth several tens of thousands of lats, etc. If, at some later point, there are suspicions about a person's income, this person can claim that the income was gained from the sale of household property. It would be difficult to check this.

- An adequate property assessment mechanism is needed. For example, the price of real estate (the draft law prescribes that initial declarations must be filed by all per-

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[51] Anticorruption Framework Document. Endorsed by the Cabinet of Ministers on August 8, 2000. http://www.politika.lv/index.php?id=100783&lang=lv Last viewed on December 15, 2001.

[52] For a critical analysis of the introduction of an initial declaration in Latvia see: Kunellis, Aksels. "Komentāri par īpašuma sākumdeklarēšanas ieviešanu Latvijā". EU PHARE Anticorruption Programme, September 12, 2001. In possession of the author.

sons who own real estate abroad) can fluctuate immensely. There can be a huge difference between the price of a piece of property at the time when it is purchased and the market value of the property when it is declared. On the other hand, if the value of a piece of real estate is not declared, it is impossible to determine the total value of a person's assets. It is not at all certain that the cadastral value of a piece of property, which is what must be declared in accordance with the draft law (Section 3, Paragraph 1), will always be helpful in estimating the real value of a person's property.[53]

- A maximum effort should be made to ensure that administration of the initial declarations is properly carried out (for example, to ensure that declarations are filed by all persons who are required to do so). If declarations are not filed by all persons who must do so, there will be undeclared property and, since it is a once-only endeavour, the initial declaration will have failed to achieve its purpose.

- A maximum effort should be made to instruct the majority of the population on how to fill out the declaration form. If a significant share of the declarations are filled out incorrectly, subsequent audits by government authorities will be confronted with a host of declarations containing false information. Furthermore, it will be difficult to penalise persons who have filed such declarations for wilfully providing false information. Here too, the initial declaration will, as in the previous case, have failed to achieve its purpose. To avoid both of these potential problems, an extensive publicity campaign targeting all parts of the population would have to be carried out in combination with easily accessible consultation opportunities. Of course, the effect of such measures is hard to predict.

- There must be a real risk, however small, that failure to file a declaration or to provide correct information (especially declaration of non-existent assets) can result in punishment. So far, discussions about the initial declaration have not produced a single method for proving that a person has declared non-existent assets. If it is possible to declare non-existent property without a real risk of punishment, the initial declaration will provide an opportunity to declare assets that a person expects to obtain unlawfully at some time in the future. Of course, this problem is inherent to all new declaration procedures and can only be eliminated, to some extent, with the help of declarations made regularly over a longer period of time.

- A situation must be established in which persons who are planning to keep open the possibility of legalising unlawfully acquired (i.e. acquired by corrupt methods) future income, could not, knowing in good time that an initial declaration will be

[53] Ibid., for more on this problem.

introduced, find loopholes which would allow them to continue obtaining and enjoying the fruits of unlawful income. This is almost impossible to do.

At the time of the writing of this report, the new law drafted by the government does not ensure any of the above. Furthermore, it is hard to imagine that all of this could be accomplished with a one-off measure such as the initial declaration. In any case, it is clear that enormous financial and human resources will be needed if the initial declaration is to have a realistic chance of accomplishing what is expected of it. All things considered, there is little that speaks for the success of this project. It is even likely that the main reason for opposition to the initial declaration on the part of policy makers is not the lack of desire to fight corruption, but rather awareness of the huge financial input that would be required for generation of extremely uncertain output.

3.3. Incorporation of the initial declaration into the tax declaration system

A third possible model would be the incorporation of the initial declaration into the existing tax declaration system. This alternative would be a curious hybrid, which would combine certain elements of the previous two models. It would differ from the first model (see 3.1.) mainly in that a full declaration of property and income would not have to be submitted each year. All persons who fulfil certain criteria would file a one-off declaration that would, in effect, be an improved version of the current supplementary declaration. It would no longer be called a supplementary declaration, but, for example, an initial declaration (the name of the declaration is not of primary importance). The difference between this model and the initial declaration proposed by the government lies in the fact that the amendments would essentially affect only the administration of the personal income tax.

This model, too, would have most of the handicaps of the initial declaration (see above). However, a complete incorporation of the initial declaration into the tax declaration system could reduce the costs of the project, possibly increase the expediency of the initial declaration and, in certain cases, improve tax collection. The current provisions of Section 6 of the draft Law on Initial Declaration of Personal Assets, which determine the use of the initial declarations, could make it difficult to use them for the calculation of taxes.[54] If initial declarations are to be used for the purpose of tax-calculation, there is

[54] The current draft of the Law on Initial Declaration of Personal Assets, Section 6, "Use of initial declarations" states: "Information which is contained in the Initial Declaration shall be requested and used in official capacity only for the purposes defined in Section 1 of this Law by the courts, by prosecutors who have special authorisation from the Prosecutor General, and by persons who have special authorisation from the director of the Office for Protection of the Constitution, the director

no reason to prescribe more rigorous rules for their use than those prescribed for declarations in the Law on Personal Income Tax. To maintain the possibility of preventing legalisation of unlawful income and to facilitate the collection of evidence in criminal cases, the law should specify that information which is provided in the initial declaration may be used by law enforcement authorities, if a criminal offence is suspected.

It is hard to judge the effect that this model could have on tax collection. Tax revenues might increase if more complete information is obtained with the help of these declarations, but it is practically impossible to estimate the extent to which at some later point unlawfully obtained or simply untaxed assets would be *de facto* legalised through the initial declaration of non-existent assets.

4. Conclusions

The initial declaration as an important instrument for fighting corruption – this is, at least to some extent, a myth. For one, there is no reason to highlight the initial declaration as a special anticorruption instrument because it could, theoretically, make legalisation of any unlawfully gained assets more difficult. For another, the success of this one-off venture is endangered by so many factors that it is almost impossible for it to succeed.

However, this does not necessarily mean that the idea of comprehensive registering of property and income should be abandoned. If a political decision is taken to carry out such registration, it can be done and it can even produce positive results. It appears, however, that it would not be wise to create a new and complicated system for this purpose – one which, possibly, does not exist in any other country. In many countries, including Latvia, property and income are traditionally registered by the tax systems, except in the cases of very specific groups of persons such as public officials. Comprehensive and regular declaration of property and income for taxation purposes would be an extremely controversial measure and whether or not it is introduced will be a political decision. In this analysis, one of the principal arguments for the introduction of this system is the expected positive side effect – it would make legalisation of unlawfully acquired income more difficult. Hence, an indirect anticorruption effect. It is clear that the choice of any other model will not produce a similar effect.

One of the biggest problems could be how to make an effective tax or declaration system attractive for influential political players. Effective and accurate registration of the

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of the Anticorruption Bureau, the Chief of State Police, and the Director of the State Revenue Service" (text reviewed by the Cabinet committee on November 26, 2001).
www.mk.gov.lv/lat/ministrukabinets/TIE_AKTI/mk_kom/1126/26lik.doc Last viewed on December 15, 2001.

property and savings of individuals would significantly curb illicit party financing. Such a system could also be inconvenient for businesses that operate in the so-called grey economy – businesses that engage in generally legal activities, but do not meet all of the state's requirements, e.g. do not pay all of their taxes. An effective declaration system would reduce the flow of undeclared money and create serious difficulties for the grey economy.

Ensuring adequate financial and human resources could also prove to be a problem. It would be difficult to allocate large sums for tax collection, since there are so many other areas such as education, health care or the pension system also contending for more resources. Additional funding for these would enjoy greater public support and would, therefore, be politically more opportune.

III. PUBLIC PROCUREMENT

1. Public procurement and the "corruption formula"

Situations in which state or local government agencies procure goods or services from the private sector increase the risk of corruption. Such situations frequently give public employees the opportunity to operate with large sums of money. If employees are dishonest and the public procurement system inadequate, there are huge opportunities to divert state and municipal funds for private interests.

Before analysing public procurement in an anticorruption context, it should be pointed out that the primary goal of the public procurement system is not the prevention of corruption or fraud.[55] The purpose of the system is to allow public institutions to purchase goods or services which they themselves are not able to provide. Among the most important criteria that must be applied to the public procurement system are effectiveness (the ability to ensure procurement of necessary goods and services) and economy. Keeping in mind that corruption is an undesirable side-effect of public procurement, not an integral component, prevention of corruption is just one of many elements that must be considered when developing procurement systems. Nevertheless, in discussions about the best public procurement models, prevention of corruption is frequently a major consideration. It is possible to include provisions that reduce the risk of corruption in legislation that covers public procurement.

In order to analyse legislation from an anticorruption aspect, be it for public procurement or anything else, it is important to define analytical criteria or set minimum standards which must be fulfilled. For this analysis, the report applies the corruption formula C = M + D – A, which was used by Robert Klitgaard, Ronald Maclean-Abaroa and

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[55] One author has had this to say about public procurement systems in the EU and the USA: "It should be emphasised that public procurement rules as exist in these two jurisdictions were not written specifically or at least not predominantly with corruption and fraud in mind. As far as the EU is concerned, the principal consideration is to promote full compensation and anti-discrimination in this area. Although anti-fraud considerations did play a major role in the history of US government procurement legislation, in the past decade the predominant consideration has been value for money." Text in author's possession.

H. Lindsey Parris in their book "Corrupt Cities. A Practical Guide to Cure and Prevention." C stands for corruption; M stands for monopoly of power; D for the discretion of public officials; A for accountability.[56] In other words, corruption tends to increase in situations where officials have a monopoly on power and discretion, but are not held accountable for their conduct.

In Latvia, procurement legislation is fairly new and subject to frequent changes. On October 24, 1996, the *Saeima* enacted the Law on State and Local Government Procurement.[57] Without going into the details of this law, one should note that its application provided ample opportunities for corruption, partly due to the fact that there was very little transparency in public procurement procedures. On July 5, 2001, the *Saeima* enacted a new procurement law – the Law on Public Procurement for the Needs of State or Local Governments, which is to become effective on January 1, 2002.[59]

Violations of regulations are a common phenomenon in Latvia's current public procurement practice. According to the State Comptroller's Office, the following are the most serious violations:

- the lowest bid is rejected without an economic or legal motivation;
- the quantity of the work to be done differs from what has been announced;
- the number of bidders is limited without reason;
- the financial background of the bidders is not thoroughly investigated;
- procurement commissions include persons who represent the interests of both contracting authority and supplier;
- without the consent of the Ministry of Finance and disregarding the fact that the Law on Budget and Financial Management does not provide for long-term appropriation of funds, five-year terms of payment are guaranteed, although the termination date for appropriation is the end of the year;
- contracts are awarded to bidders without observing the provisions of the law, unfounded advance payments are made for the whole procurement sum or part of the sum, funds are used for purposes not anticipated in the estimate;

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[56] Klitgaard, Robert, Maclean-Abaroa, Robert and H. Lindsey Paris. Corrupt Cities. A Practical Guide to Cure and Prevention. ICS Press (2000), pp. 26–27.

[57] Law on State and Local Government Procurement. *Latvijas Vēstnesis*, November 13, 1996; July 8, 1998; April 13, 2000.

[59] Law on Public Procurement for the Needs of State or Local Governments. *Latvijas Vēstnesis*, July 20, 2001.

- the sums indicated in bidding documents are exceeded;
- contracts are awarded for works or for the supply of goods or services without tendering or competition.[60]

In most of these cases, the officials responsible for procurement of goods or services used their discretion without observing the provisions of the law. And in many of the cases, the officials were not held accountable for these violations. Although some of the violations were, possibly, due to negligence or ignorance of the responsible official, such situations are conducive to corruption.

This chapter will not comprehensively analyse Latvia's public procurement system in an anticorruption context. Instead, with the help of case studies, the report of the World Bank and materials provided by Transparency International Latvia (Delna), it will examine certain aspects which could be improved in order to prevent corruption. The 2001 Public Procurement Law provides for many mechanisms with significant anticorruption potential. **In this chapter, the goal of the report is to provide recommendations that would make prevention of corruption in the public procurement system even more effective.**

2. Case studies

In order to uncover some of the weak points in the current public procurement system and to illustrate them with real examples, the report will examine two specific cases. There was a certain amount of difficulty involved in obtaining the information needed to analyse particular public procurement cases. Some information on public procurement cases that have come to the attention of the public can be obtained from the media, but this is not always a reliable source when it comes to accuracy and credibility. Interviews are another source of information, but the problem here is lack of cooperation on the part of bidders.[61] One of the sources used in this chapter are documents published

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[60] Republic of Latvia State Comptroller's Office. Annual Report 2000 (State and Municipal Procurement). http://www.lrvk.gov.lv/htmls/latindex.htm Last viewed on December 26, 2001.

[61] The author of the report sent letters with requests for interviews to eight Latvian companies which had filed complaints about public procurement issues between 1999 and June 2001. The interview questions were: (1) In the experience of your company, how fair, economically rational and effective is the way in which the state and/or municipal public procurement system operates in Latvia? (2) What, in your opinion, are the greatest drawbacks of the Latvian state and municipal public procurement system? (3) Which of these drawbacks (if any) particularly increase the risk of unfair competition and bribery? (4) How should the existing procedure for filing and reviewing complaints

by the State Comptroller's Office. The advantage of this source is its reliability regarding legal facts. The disadvantage is that this source shows only one side of an issue.

Both case studies demonstrate erroneous application of the law. In neither of the cases can the officials be accused of committing grave errors or even criminal offences. However, such or similar errors are a widespread phenomenon in Latvia's public procurement system. This suggests either that the requirements of the law can not be fulfilled, that public officials are negligent and/or ignorant, or – the final possibility – corruption.

2.1. Procurement of technical aids

At the end of the year 2000, the non-profit organisation Centre for Technical Aids posted notice of five invitations to tender for the supply of technical aids, such as artificial limbs, in the year 2001:

- No. 7/2000 for the supply of prostheses, braces and orthopaedic shoes for the year 2001;
- No. 8/2000 for the supply of hearing and vision aids for the year 2001;
- No. 9/2000 for modification of automobiles for the year 2001;
- No. 10/2000 for the supply of aids for personal mobility for the year 2001;
- No. 11/2000 for the supply of aids for personal care for the year 2001.

1,464,583 lats had been allotted from the State budget for this purpose. In the course of the tendering process, the Centre for Technical Aids committed several breaches of regulatory enactments. For example, the Centre disregarded regulations issued by the Ministry of Finance on the procedure for assigning state and local government procurement identification numbers (August 4, 1997) and assigned the identification numbers incorrectly, making it impossible to identify the contracting authority.[62] An incorrect

be judged? Is this mechanism effective? (5) What improvements would be necessary in the public procurement system? (6) If the respondent is sufficiently well-informed, how does the respondent judge the Law on Public Procurement for the Needs of State or Municipality enacted by the *Saeima* on July 5, 2001?

The author received only one answer. As a result, only one interview was conducted.

[62] Clause 5 of Ministry of Finance instruction on the procedure for assigning state and local government procurement identification numbers stipulates: "If the volume of state procurement of goods, services

identification number can make it difficult to identify the responsible institution, but in a corruption context it is, in itself, not necessarily a serious problem.

The Complaints Commission of the Ministry of Finance and the State Comptroller's Office also found that pre-qualification documentation did not include all the information required by the law. For example, there was no information about the quantity of or objective standards for the goods to be supplied, which could be used to establish pass or fail criteria for the bids.[63] While it is true that the specifics of the goods or services to be procured may make it difficult to order a precise amount and define clear and objective requirements, tender regulations should include requirements that are as precise and objective as possible.

The qualification requirements indicated in the invitations to tender did not concur with the rules for tenders. The invitations indicated that bidders must have previous experience in production or supply of technical aids, although the bidding documents did not include this requirement and allowed companies to take part, which had been officially registered only a few weeks prior to submitting their bids. In this case, the inconsistency between the requirements indicated in the invitations to tender and those in the tender regulations could have reduced the number of potential bidders and narrowed competition. Bidders without previous experience might not have requested the bidding documents, erroneously considering themselves not eligible (there is, however, no information that this may have been the case).

Regulations on opening of bids, which stipulate that the procurement commission must first open the envelopes containing the bids, and that the envelopes containing assessment of bidders' qualifications must be opened in a closed session, were also

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or works (with the exception of construction works) is anticipated to exceed a threshold of 5,000 lats and 50,000 lats for construction works, identification numbers shall be formed by adding to the consecutive numbers:
5.1. the uppercase initials of the contracting authority, if the contracting authority is a ministry or some other state or local government institution (Appendix 1);
5.2. the uppercase initials of the above government institution or ministry (Appendix 1) and the name or comprehensible abbreviation of an agency under the supervision of such institution or ministry, if such agency is the contracting authority;
5.3. the full name of the contracting authority if it is neither of the above. If the contracting authority is a local government, the identification number shall include the name of the county and the district in which the county is located." *Latvijas Vēstnesis*, August 12, 1997.

[63] Republic of Latvia Ministry of Finance letter to the State Comptroller and the Ministry of Welfare on review of a complaint. January 29, 2001. No. 12-05/39.

violated.[64] Since the procurement commission did not follow the rules, some of the bids were never opened, having previously been disqualified as failing to conform to requirements. The State Comptroller's Office also concluded that in none of the cases had there been an evaluation table for evaluating the conformity of the bids.

The procurement commission had chosen the merit-points method to compare and evaluate the bids, but the evaluation principles that were actually applied did not correspond to the chosen method. In some of the cases, the contract was awarded to bidders who had received a lower number of points than others. This is the worst of the violations and a clear demonstration of public officials' discretion to award contracts to bids that have not been evaluated as the best.

Another regulation that was violated stipulates that only such technical aids may be sold and distributed in Latvia which have been registered by the Agency for Health Statistics and Medical Technology. For example, the procurement commission awarded one contract to a bidder who did not have a registration certificate for medical equipment and supplies (these were obtained only after the contract had been signed).

Generally speaking, each case in which it is possible for officials to ignore regulations increases the freedom of public officials to do as they please. Discrepancies between invitations to tender and tender regulations as well as the awarding of contracts to bids which are neither the lowest nor the best may be due to negligence or consideration of factors which are not named in the documents, but they also increase the risk of corruption. Competing bidders begin to suspect corruption and fraud, if in certain cases statutory requirements are not applied to the winning bidders. In such cases, the "Discretion" element of the corruption formula is activated, making it possible for unqualified bidders to win contracts.

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[64] Section 21, Paragraph 3 of the Law on State and Local Government Procurement states: "The contracting authority's officials (the procurement commission) shall, in the presence of the bidders, open the sealed envelopes and read out loud the cardinal data of each bid (including the cost)." Clause 3 of the Ministry of Finance instruction (dated May 21, 1998) on assessment of bidders' qualifications, evaluation of bids, comparison of bids and choice of the most advantageous bid states: "Should the assessment of qualifications take place at the same time as evaluation of the bids, assessment of the bidders' qualifications is conducted at a closed session, specifying whether the necessary documents for assessment of qualification have been submitted and whether the documents are in order." This means that a bid may not remain unopened on the basis of the argument that the bidder has been found to be unqualified. Clause 7 of the instruction states: "Assessment of qualifications ends (highlighted by the author of the report) with the disqualification of such bidders from further participation in bidding (competition) who have failed to fulfil any of the requirements for bidders or bids." *Latvijas Vēstnesis*, May 27, 1998.

In this case, want of an effective monitoring institution led to what was basically a power monopoly (the "M" element in the formula) for the officials. They permitted violations that had certain legal consequences, but there was no effective mechanism to prevent these consequences. The ruling of the State Comptroller's Office does not even mention the possibility that the contracts could be reviewed or the guilty officials held accountable. The only hint at a possibility of reviewing the contracts was the request that the Ministry of Welfare and the Centre for Technical Aids reassess the qualifications of one of the winning bidders to ensure the procurement of technical aids in accordance with Cabinet regulations.[65]

In this particular case, one has, to some extent, all of the individual elements of the "corruption formula" (corruption = monopoly power + discretion – accountability). Although there are no reasons for claiming that Centre for Technical Aids officials were involved in corrupt activities, this manner of conducting business does incorporate the risk of corruption.

2.2. Construction of the Buļļupe Bridge

On October 31, 2000, the Riga City Council posted notice of invitation to tender for construction of a bridge over the Buļļupe River. The first time around, there were no results and a renewed invitation to tender, No. RD SD 2001/41, was announced in May of 2001. Bidding documents were issued to seven bidders, but bids were submitted by only four, of whom one later retracted the bid. The three remaining bidders were two limited companies, Viadukts, Tilts, and one unlimited partnership, BMGS S.

Following the unanimous vote of the procurement commission, the contract for construction of the bridge over the Buļļupe River went to BMGS S. The competitors, Tilts and Viadukts, appealed the decision.

The State Comptroller's Office established that the bidding documents for the renewed invitation to tender had not included information on the method for calculating the price of a bid, which was a violation of several regulatory enactments. In addition, according to the Comptroller's Office, an unlimited partnership such as BMGS S did not have the status of a legal entity. None of the bidders had fulfilled the requirement for experience in the construction of similar objects completed in the past three years,

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[65] Republic of Latvia State Comptroller's Office, Economic Audits Department. Ruling on the legitimacy, efficiency and accuracy of the activities of the Centre for Technical Aids with regard to procurement of technical aids for the needs of the population (No. 5.1-2-52/2001, No. 5.1-2-53/2001, No. 5.1-2-54/2001, No. 5.1-2-106/2001, No. 5.1-2-139/2001). Riga, July 5, 2001. http://www.lrvk.gov.lv Last viewed on December 6, 2001.

or the requirement regarding annual company turnover.[66] However, the procurement commission continued to review all of the bids, thus failing to comply with the requirements of the Law on State and Local Government Procurement. The law states that only bids that fulfil all requirements of the tender regulations may be regarded as acceptable (Section 22, paragraphs 3 and 4). The State Comptroller's Office also found several other breaches of laws and regulations.

The Riga City Council was charged with informing the State Comptroller of its assessment of the liability of the chairman and officials of the procurement commission by December 15, 2001 (the answer of the Riga City Council and following activities could no longer be taken into consideration for this report).[67]

Tilts submitted a claim to the court, requesting – among other things – that the decision to award the contract to BMGS S be declared illegal. An urban district court satisfied Tilts' claims. However, on December 13, 2001, the Riga Regional Court reviewed an appeal by the Riga City Council and rejected all of Tilts' claims.

According to the ruling of the State Comptroller's Office, the members of the procurement commission had failed to observe regulations on bidders' qualification requirements. It is quite possible that the requirements with respect to previous experience and turnover were exaggerated, and that it would not have been expedient to reject all bidders. In that case, the problem lies in unrealistic requirements, which lead to discretion regarding whether or not to observe regulations, laws and other regulatory enactments.

The other violations pointed out by the State Comptroller's Office would require a detailed legal assessment, which can not be the objective of this short case study. The competing bidders' appeal to the court shows that it is possible to use the legal system

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66 Clause 2.2. of the tender regulations stated: "Bidders must fulfil the following criteria:
- Average yearly turnover (i.e., the total volume of finished and unfinished projects) in one of the past two years must be at least 2.5 million lats, or total turnover for the past three years must be six million lats (only for bridge construction). The turnovers of general contractor and subcontractor may be added together, if the original contract anticipated participation of a subcontractor and if the subcontractor did not submit a separate bid.
- In the past three years, the bidder must have been general contractor for at least one construction project that is similar in nature and complexity (to fulfil this requirement, 100% of the project must be completed). Such experience as a subcontractor is acceptable, if a previously signed contract anticipates participation of a subcontractor and if the subcontractor did not submit a separate bid. [..]"

67 Republic of Latvia State Comptroller's Office, Economic Audits Department. Ruling on invitation to tender No. RD SD 2001/41 for phase 1 of construction of the bridge over the Buļļupe River (No. 5.1-2-194/2001). Riga, November 16, 2001. http://www.lrvk.gov.lv Last viewed on December 6, 2001.

as a tool for ensuring accountability in public procurement. However, the Riga Regional Court found that it was not necessary to assess the compliance of the bidders with the tender regulations. All in all, in this particular case the court did not significantly contribute to strengthening the accountability of public officials.

The case of the Buļļupe Bridge illustrates elements of the discretion of public officials as well as an accountability deficit.

3. The World Bank's Procurement Assessment Report

Latvia's public procurement system has been assessed by several international institutions. In January 2001, the World Bank issued its Country Procurement Assessment Report. In this report, the World Bank does not see Latvia's public procurement system as one which could replace the World Bank's own procurement system in Latvia. Regular, albeit much less detailed assessments of Latvia's public procurement system can also be found in the progress reports of the European Commission.

The World Bank undertakes assessment of the procurement environment, covering both public and private sectors, in borrowing member countries on a systematic basis. The objective of the assessment is to provide useful feedback to borrowers regarding the strengths and weaknesses of their public procurement systems. In Latvia's case, an assessment was made of the situation which ensued following enactment of the 1996 Law on State and Local Government Procurement.[68] The 2001 Public Procurement Law will take effect on January 1, 2002 and replace the 1996 law. Therefore, for the purposes of this report, it was not possible to analyse application of the 2001 law (hereafter, the new law). It was only possible to analyse the text of the law and to predict the problems that application of the law might entail. At the time of the writing of this report (up to mid-December 2001), the secondary regulatory enactments (Cabinet regulations), which are necessary for implementation of the new law, had also not yet been adopted. In this chapter, the report will examine the extent to which the 2001 Procurement Law has taken into account some of the deficiencies that were pointed out by the World Bank (highlighted in bold).

Inconsistencies and gaps between procurement legislation, Cabinet regulations and Ministry of Finance instructions. Lack of consistency in regulatory enactments usually results in a tendency to increase the discretion of public officials which, in turn, results in greater risk of corruption. This problem can be eliminated with adequate secondary

[68] The World Bank. Republic of Latvia Final Country Procurement Assessment Report (CPAR). Volume I. January, 2001. At the disposal of the author.

regulatory enactments to the Procurement Law. At the time of the writing of this report, the secondary regulations were still being drafted, which is why this aspect could not be analysed in full.

The Ministry of Finance Public Procurement Monitoring Department lacks autonomy. Its role and functions are narrowly defined, which leads to weak implementation of regulatory enactments. Section 38, Paragraph 1 of the new law states: "The Procurement Monitoring Department is a government agency under the supervision of the Ministry of Finance, which operates in accordance with this law, the by-law of the Procurement Monitoring Department, and other regulatory enactments." This means that the Department will not be an integral part of the ministry's central apparatus and will have a certain degree of autonomy.[69] However, only time will show whether the degree of autonomy guaranteed by the law is sufficient to ensure that the Department will exercise the rights and responsibilities anchored in the law in a correspondent way in all similar cases.

The rules for monitoring low-value procurement are inadequate. Section 22, Paragraph 2 of the new law prescribes that the contracting authority must request price quotations if the anticipated contract price is between 1,000 and 5,000 lats for purchase or rental of goods or provision of services, or between 1,000 and 50,000 lats for construction works. The request-for-quotations procurement method is a method that is difficult to monitor. Transparency International Latvia (Delna) has pointed out: "Since the procurement commission is free to choose which three (minimum) candidates it will invite to submit bids (Section 29, Paragraph 2), the possibility is not ruled out for the contracting authority to develop corporate ties with a small group of entrepreneurs who are regularly awarded contracts, shutting out all other potential bidders."[70]

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[69] Sections 16 and 17 of the Law on Ministry Structure define the term "supervision." Section 17 of the law defines the authority of the Minister with regard to the agencies under supervision of the Ministry: "Agencies supervised by the Ministry are legal entities. Supervision, unless otherwise specified by the law, is carried out by the Minister (State Minister), who:
1) submits to the Cabinet recommendations on:
a) appointment of the director of the agency under his supervision. If legislation or Cabinet regulations do not specify otherwise, the director is appointed and dismissed by the respective minister;
b) budget funds for the agency;
2) cancels the directives of the agency's director or halts agency operations, if the directives or the operations are unlawful." *Latvijas Vēstnesis*, June 26, 1998.

[70] Kurpniece, Diāna. "Korupcijai valsts pasūtījumos durvis vēl nav ciet" (The door has not yet been closed on corruption in public procurement). Recommendations of Transparency International Latvia (Delna) for improvements to the Law on Procurement for the Needs of State and Local Governments. Public policy site "politika.lv".
www.politika.lv/index.php?id=102183&lang=lv Last viewed on December 27, 2001.

Indirect monitoring must be carried out, for example, by systematically making sure that persons requesting quotations do not find themselves in a conflict-of interest-situation and by publishing information about upcoming requests for quotations on the Internet. In certain cases, control of conflicts of interest could prevent persons requesting quotations from gaining personal profits. In addition to prescribing the obligation to publish requests for quotations, the law should also make it possible for uninvited bidders to submit quotations. This would increase the number of potential bidders, increase competition and reduce chances to form a closed group of bidders on the basis of corrupt connections. Increasing competition and transparency would, in this case, be particularly important because the new law does not anticipate the right of bidders or other persons to submit complaints to the Procurement Monitoring Department about the conduct of the contracting authority with regard to the legitimacy of requests for quotations.[71]

Because economy and efficiency are not established as the overriding objectives of the law, procurement and contract award decisions are frequently made on non-economic grounds. Section 2 of the new law establishes the objectives of this regulatory enactment, which are: to ensure (1) transparency of the procurement procedure, (2) free competition for vendors, lessors, service providers and construction enterprises, as well as equal and fair treatment, (3) effective use of state and local government funds. The third objective at least partly observes the criticism of the World Bank (although, strictly speaking, effective use of funds does not necessarily have to be economic – effect can also be achieved with overly extravagant use of funds). It is true, however, that there is a tendency in Latvia to ignore the objectives of a law when applying individual provisions.

The primacy of tendering as the basic procurement method is undermined by inadequate restrictions on breaking down contracts and weak implementation of regulations. This is one of the major flaws pointed out by the World Bank in an anti-corruption context, because tendering is a more effective method of preventing the distortions that result from corrupt connections than requesting quotations or awarding contracts on the basis of the offer of a single supplier. The new law prescribes fairly liberal options for breaking down procurements "in order to allow more bidders to participate by submitting bids for individual parts of the procurement" (Section 3, Paragraph 4), but it appears that this method of breaking down procurements will not increase the risk of corruption. Breaking down of procurements in order to allow the choice of a simpler procurement method is to be prevented by the stipulation that the choice of method be determined by the anticipated contract price. Section 3, Paragraph 4 of the law states that, if the total procurement is broken down into parts, and separate

[71] Similar recommendations were also expressed in the previously quoted article by Diāna Kurpniece.

contracts awarded for each part, the contract price is determined on the basis of the total price for all separate parts.

There is a limited range of procurement methods. There is no two-stage tendering method. The competition method, which is currently used as a form of two-stage tendering, is inappropriate for this purpose. The new law anticipates closed competition as a conditional equivalent of the two-stage tendering method. All interested persons may participate in the initial exercise of a closed competition. The procurement commission then selects the bidders who are invited to submit bids for the announced competition (Section 26, Paragraph 1). However, the law does not clearly define in which cases the competition must be open and in which closed.

The previous Law on State and Local Government Procurement defined four procurement methods: tendering, competition, request for quotations, and awarding of the contract to a sole bidder. The new law also defines four procurement methods: open competition, closed competition, request for quotations and a negotiation procedure. At first glance, it might seem that the number of methods has been reduced because tendering is no longer included, but even in the previous law, the tendering method was very similar to the competition method, which is why the reduction of the number of applicable methods is actually only superficial.

The limitation on the participation of foreign bidders is excessive and promotes uneconomic results. Participation of foreign bidders increases competition which, in accordance with the previously defined formula, is a potential anticorruption factor. The new law defines the bidder without addressing the issue of the country of origin (Section 1, Paragraph 4). From this, one can conclude that discrimination on the grounds of country of origin of the bidder is not acceptable.[72]

There is an absence of standard pre-qualification or bidding documents for the main types of procurement – goods, works and services. The law does not prescribe standard pre-qualification or bidding documents. To keep the requirements that bidders must meet as reasonable as possible and to prevent the inclusion of unjustified qualification criteria, there should be standard qualification requirements and assessment criteria for the most common types of procurement.

Because the bidder's qualifications are assessed not just during pre- and post-qualification but also during evaluation of the bids, bid evaluation includes factors extrinsic

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[72] See also: Alehno, Ivo. "Preču, pakalpojumu, un būvdarbu pārdošana valstij. Informatīvs materiāls uzņēmējiem, kuri vēlas piedalīties valsts un pašvaldību rīkotajos iepirkumu konkursos". (The sale of goods, services and works to the State. Informative material for entrepreneurs who wish to participate in state and local government competitions.) Riga (2001), p. 19.

to the contents of the bids themselves, leading to unpredictable and inappropriate contract award decisions. The new procurement law prescribes that bidders' qualifications must be assessed before evaluation of the bids. For example, Section 25, Paragraph 11 says this about open competitions: "The procurement commission assesses the qualifications of the bidders [..], examines the bids for compliance with the technical and other requirements of the prospective contract, and then evaluates the bids that meet such requirements pursuant to this law, other regulatory enactments and the criteria and rules set out in the bidding documents." One sees that the new law no longer has the flaw that was pointed out by the World Bank.

The law does not require that the contracting authority open bids publicly, nor does it require that bids must be opened immediately after the deadline for submittal. According to the World Bank, both of these are fundamental requirements for fairness and transparency of public procurement. This problem has been partially eliminated in the new law. In an open competition, "the procurement commission shall open the bids immediately after the deadline for submittal, at the time and place indicated in the bidding documents. Should a bid be submitted after the deadline, it shall be returned to the bidder unopened. All bidders or their representatives are entitled to be present at bid opening. The bid opening procedure is recorded in a document, which shows the names, surnames and titles of the persons present, as well as the names of the bidders, the date of submittal, the proffered price and other relevant information (Section 25, Paragraph 10)." It is true, in a closed competition the bids are opened at the time and place indicated in the bidding documents, and not necessarily immediately after the deadline for submittal (Section 26, Paragraph 11).

Award of the contract is made to the "most advantageous" rather than to the lowest-priced or lowest-evaluated bid. The methodologies used for bid evaluation are subjective and include use of the "merit-points system" and consideration of factors extrinsic to the bids themselves, leading to unpredictable and uneconomic outcomes. The new law clearly prescribes the price criterion, if the contracting authority intends to purchase or lease goods.[73] The "most advantageous" criterion can be applied, if the contracting authority intends to award a services or construction-works contract. The economically "most advantageous" bid is determined on the basis of various criteria, some of which are difficult to compare objectively and quantitatively, for example, the aesthetic qualities of a bid (Section 1, Clause 9). Situations in which the applied criterion is the economic advantage of a bid comprise the risk of discrimination of individual

[73] Section 30, Paragraph 3 of the Procurement Law prescribes: "In the case of a competition, should the contracting authority intend to award a contract for the purchase or lease of goods, the procurement commission shall choose the lowest-priced bid, which meets the requirements and technical specifications of the bidding documents."

bidders. A discriminating attitude towards certain bidders often indicates corruption. This is why, whenever possible, the only evaluation criterion should be the price.[74]

One sees that even the new law will probably permit situations where evaluation is done on the basis of subjective criteria which are actually irrelevant to the prospective contract. Permitting criteria other than price makes it possible to include criteria in bidding documents, which favour a particular bidder with whom previous agreement has already been unofficially reached, based, perhaps, on corrupt connections. In this case, the law alone can probably not solve the problem, because there are numerous types of services for which the price can not be the sole consideration.

Box 5.
Requirements conceived for one specific bidder

In a large city in Latvia, the department of a ministry posted notice of a competition for construction works. The bidding documents included the following requirements: previous cooperation with the contracting authority (four years give 30 merit points); licence; 24-month guaranty; certified specialists (these three together give 50 points); and price (20 points). These requirements were conceived for one specific company, because there was only one company that could claim four years of cooperation with this particular institution. The licence, the 24-month guaranty and the certified specialists are requirements prescribed by the law for all construction works, and these 50 merit points would go to all bidders. Only one bidder could receive 30 points for previous cooperation. For this reason, this one company could propose a price that was as high as it chose, because even if another bidder were to receive more points for a better price, this could not compensate for the cooperation merit points.[75]

In every case where the request-for-quotations (RFQ) method can be applied for procurement of goods, works or services (under 10,000 lats), the contracting authorities *de facto* have the discretion to decide against the use of this method and instead opt

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[74] See also: Kurpniece, Diāna. "Korupcijai valsts pasūtījumos durvis vēl nav ciet" (The door has not yet been closed on corruption in public procurement). Recommendations of Transparency International Latvia (Delna) for improvements to the Law on Procurement for the Needs of State and Local Governments. Public policy site "politika.lv". http://www.politika.lv/index.php?id=102183&lang=lv Last viewed on December 27, 2001.

[75] Author's interview with the president of a professional association. June 28, 2001.

for examining only one tender. The new law no longer allows the method of examining only one tender. A qualified and rather far-removed equivalent of this method anchored in the new law is the negotiation procedure. The law defines a whole row of conditions for the application of this method, which does not necessarily involve only one bidder and, at least theoretically, allows greater competition than previously, when only one tender was considered.

There are no provisions for debarring bidders for fraudulent or corrupt activity. The new law anticipates the need for a special list of companies. Section 39, Paragraph 2, Clause 3 charges the Procurement Monitoring Department with preparation of such a list. If a bidder is included in this list, the contracting authority disregards his or her bid and excludes the bidder from further participation in any of the evaluation stages. These so-called black lists are sometimes considered to be effective instruments against corruption and fraud in public procurement. Such lists include, for example, bidders who have been involved in corrupt or fraudulent activities, and such violations do not necessarily have to have been proven in court. Persons who have been blacklisted are for a certain period of time excluded from participation in public procurement. The use of black lists does, however, involve certain problems because, for example, there may be nothing to prevent the owner of a company which has been blacklisted from setting up a new company, which can participate in public procurement. In any case, it was not possible to analyse the practicability of a special list, because the Cabinet must still work out regulations for preparing such a list. At the time of the writing of this project, the regulations had not even been drafted.

The complaints and appeals system is underdeveloped. This World Bank complaint is justified, both from a legislative and from a practical aspect. Section 30, Paragraph 3 of the old Law on State and Local Government Procurement contains provisions which are overly restrictive. For example, the contracting authority's choice of procurement method or method of qualification assessment and bid evaluation as well as the choice of criteria for either can not be appealed. This increases the discretion of the contracting authority and at the same time reduces the obligation of public officials to account for their actions. There are several other factors as well, which have made it practically impossible to influence public procurement procedures by way of appeal.

The new law, at least theoretically, provides for a much more effective procedure for dealing with complaints. Particularly encouraging is the provision that says: “Should a complaint be submitted to the Procurement Monitoring Department before awarding of the procurement contract, the Procurement Monitoring Department shall inform the contracting authority and the contracting authority shall not award the contract without receiving permission to do so from the Monitoring Department” (Section 41, Paragraph 3). This means that, if a complaint has been filed in accordance with the provisions of the law, there is at least a theoretical chance to halt the procurement

process, if the contracting authority or the procurement commission have failed to observe regulations. The new law also no longer contains unjustified restrictions regarding which of the activities of the contracting authority it is possible to appeal.

Box 6.
Former futility of appeals

Fragments from a report prepared by the Ministry of Finance Public Procurement Monitoring Department illustrate how an appeal can fail to influence procurement, even if violations have been uncovered: "Complaint filed by company XX disputing the conduct of the contracting authority in connection with invitation to tender No. [..] for the supply of computers for the State Revenue Service. The complainant disagrees with the decision of the tender commission to reject the company's bid on the grounds that it fails to meet the requirements of the bidding documents. The SRS neglected to explain to the bidder precisely which of the requirements the bid failed to meet.

The commission ruled that after receiving additional explanations from company XX, the procurement commission had no legal basis for refusing to consider them. Taking into account that company XX had provided detailed answers to the procurement commission's questions, verifying compliance of the bid with the requirements of the bidding documents, and that an independent expert invited by the commission had also qualified the bid as conform, the procurement commission had no right to dismiss the bid with the argument that it fails to comply with bidding documents. This suggests that not all bidders have been treated equally and fairly. Furthermore, the contracting authority has not allowed company XX to receive copies of Parts 1 and 2 of the minutes of the awarding of the contract. This means that the contracting authority has failed to observe transparency regarding the procurement."[76]

Despite the ruling of the commission, bidding results were not rectified and company XX never received any information about why its bid had been rejected.[77]

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[76] Report on complaints regarding public procurement issues reviewed by the Complaints Commission. Unpublished document prepared by the Ministry of Finance Public Procurement Monitoring Department, at the disposal of the author.

[77] Author's interview with the executive director of company XX. Riga, August 8, 2001.

There is no permanent capacity or system to ensure public procurement training for public officials. The public procurement system is a rather complex system, which requires specific competence. It is difficult to ensure such competence, since in a decentralised procurement system there is a very large number of state and local government agencies and institutions that act as contracting authorities. The new law gives the Procurement Monitoring Department the right to provide technical assistance, consultations and training for contracting authorities, vendors, lessors, service providers and construction companies. However, if there are insufficient funds or if there is insufficient target-oriented demand for such training, the rights which are anchored in the law could have no more than a declarative function. The law itself creates neither the capacity nor the system for such training.

In general, the new Procurement Law appears to eliminate, or at least partially eliminate, several of the problems pointed out by the World Bank. A comprehensive assessment of how the law functions in practice will only be possible after it has been in force for some time. However, some aspects already show that the new law has failed to completely eliminate the old flaws. After examining the efforts to eliminate the problems pointed out by the World Bank, one can draw the following conclusions:

- The Procurement Monitoring Department will still not be an independent institution and will still be under the supervision of the Ministry of Finance. This status subjects it to pressure from the Minister of Finance. This risk is particularly dangerous because payments from potential public procurement bidders can be an important source of funds for political parties. On the other hand, even an independent status comprises risks. For example, the Procurement Monitoring Department can itself become corrupt, if there is not sufficient supervision.

- Not all sensible measures have been taken to prevent and monitor corruption using the request-for-quotations procurement method.

- The law does not anticipate the need for standard qualification requirements and bidding documents for the most common types of procurement, in cases where this is possible.

- Considering the problems with the current public procurement system in many of Latvia's state and government institutions, whenever possible, price should be prescribed as the sole criterion for evaluation of bids. This would reduce discretion of the contracting authorities and risk of corruption. It is, of course, true that regulatory enactments alone will never be able to completely eliminate the risk of discrimination that is carried out with the help of inadequate criteria, unjustified technical specifications or other methods.

- It is difficult to explain why such an important question as regulation of the special lists has been completely entrusted to the Cabinet. In order to implement this measure,

there are several important questions that must first be answered. For example, how to define the reasons for including a company in the special list and how to ensure against ways and means of circumventing the restrictions imposed by the list, such as founding a new company.

4. Recommendations

Analysis of the public procurement system from an anticorruption aspect should be continued. One angle that has not been analysed in detail is whether and to what extent the risk of corruption can be reduced by applying European Union regulations to public procurement. In this final section, the report will include a number of recommendations for improving Latvia's public procurement system from the aspect of corruption prevention. These recommendations, too, are based on the previously described "corruption formula." This means that the recommendations are aimed at reducing the power monopoly of public officials, reducing discretion and strengthening accountability.

Limiting discretion of public officials. This should be seen as a general recommendation and as a basis for other, more specific recommendations. Although in a corruption-prevention context limiting the discretion of public officials is usually considered to be a positive reform, it does have negative side-effects as well. One of the main objectives of reform of the public procurement system is finding the right balance between restricting discretion and maintaining flexibility. As Susan Rose-Ackerman puts it, procurement reform means "trade-offs between avoiding corruption and giving officials the flexibility to make decisions in the light of their own knowledge. Discretion increases corrupt incentives, but critics of elaborate procurement codes point to their excessive rigidity."[78] Although strict and even "rigid" regulations create additional costs (strict bidding regulations can, for example, limit the number of bidders, which results in higher prices), in an environment where corruption is widespread, it could be helpful to reduce the discretion of public officials for at least a certain period of time. This kind of approach could prove to be worthwhile in Latvia as well.

Standard documents. Use of standard documents for public procurement is one of the concrete measures that limit the discretion of public officials. With regard to technical specifications, the law prescribes the obligation to coordinate these with existing Latvian, European and other standards. For the most common types of procurement, it would be useful to develop standard samples for the description of technical specifications,

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[78] Rose-Ackerman, Susan. Corruption and Government. Causes, Consequences and Reform. Cambridge University Press (1999), p. 59.

where this is possible. Furthermore, the contracting authority should be required to use these standard samples for the bidding documents, unless there is a special reason for not doing so. Standardised samples should also be developed for bidder qualifications for certain types of procurement.

Standard documents help to avoid situations where bids or bidders can be asked to meet requirements which are of no consequence for the actual procurement. This would be important in an anticorruption context because such requirements are often imposed in order to create an unfair advantage for a bidder who has corrupt connections with the contracting authority or some of its officials.

Liability of public officials. The case studies show that even in situations where the discretion of officials is limited by legislation (for example, where officials are obligated to observe the criteria set out in the bidding documents), in practice such norms are simply ignored. In the public procurement system in Latvia, procedural violations have taken on massive proportions. In the year 2000, the State Comptroller's Office examined 45 state and local government procurement cases. In 29 of these cases, requirements imposed by the law had been disregarded.[79] The State Comptroller holds that "persons who are responsible for losses incurred by the State, must be held liable and charged with recompensing such losses."[80] This indicates such a tremendous lack of responsibility that even if regulatory enactments provided for an extremely effective procurement system, in practice it could turn out to be fairly useless. Therefore, although the new Procurement Law sensibly limits the discretion of officials in numerous aspects, these provisions could fail to produce the desired effect, if the accountability system is not improved.

One of the solutions to this problem could be to give a single institution the authority to monitor and penalise. The Procurement Monitoring Department should be given the authority to hold persons who have violated public procurement regulations administratively liable in cases where legislation provides for such sanctions. In an anti-corruption context, this would have a positive effect because it would help to prevent situations in which violations of procurement regulations are unofficially accepted by the head of an agency or institution. The parts of the Latvian Administrative Sanctions Code which deal with liability for violations of public procurement regulations would have to be changed to align them with the new law. Harsher penalties would be another option, since even seemingly innocent transgressions can entail particularly great risks. However, before stiffer penalties are introduced, extensive measures should first be

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79 See: Republic of Latvia State Comptroller's Annual Report 2000 (State and local government procurement). http://www.lrvk.gov.lv/htmls/latindex.htm Last viewed on December 26, 2001.

80 Ibid.

taken to improve the qualifications of officials who are involved with public procurement, since many violations may be the result of ignorance and not malicious intent.

Improving competition and transparency in requests for quotations. The request-for-quotations procurement method is a method that is suitable for comparatively small procurements, simplifying administrative procedures as much as possible. The advantage of this method is its simple administration, which is why, for the purpose of corruption prevention, it would not be wise to complicate it, for example, by prescribing a special procedure for selection and rejection of potential bidders.

However, in an anticorruption context, it is important to increase competition even when using this method. For this purpose, it should be stipulated that requests for quotations must be publicised in due time following the decision to use this method. Such announcements could be posted on the Internet, which could be done quickly and without great additional costs. Furthermore, the law should stipulate that, up to a specified deadline, all bidders have the right to submit bids, not just those who have been chosen by the procurement commission. This would help to avoid situations where long-term cooperation between a specific bidder and a specific institution leads to corporate or even corrupt ties, which in turn lead to unreasonably costly procurements and debarring of competitive bidders.[81] Public officials who organise requests for quotations would lose discretion to completely control which bidders are allowed to submit proposals.

The role of the Public Procurement Monitoring Department (PPMD). For the Public Procurement Monitoring Department, technical assistance, consultations and training for persons involved in public procurement should be one of the priorities. The PPMD should at least be prepared to make recommendations to contracting authorities on how to organise public procurement in such a way as to reduce possibilities for corruption. For example, the Department could recommend measures for promoting transparency in the process of requests for quotations. The Department could also prepare the previously mentioned standard procurement documents.

Ethical standards for public procurement have not been included in the new Procurement Law. However, the law entitles PPMD to perform "other activities permitted by regulatory enactments, in order to fulfil [..] its duties as prescribed by the law" (Section 39, Paragraph 1, Clause 8). This implies that PPMD could take the initiative and, in

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[81] Similar recommendations are found in: Kurpniece, Diāna. "Korupcijai valsts pasūtījumos durvis vēl nav ciet" (The door has not yet been closed on corruption in public procurement). Recommendations of Transparency International Latvia (Delna) for improvements to the Law on Procurement for the Needs of State and Local Governments. Public policy site "politika.lv". http://www.politika.lv/index.php?id=102183&lang=lv Last viewed on December 27, 2001.

addition to providing technical assistance, consultations and training, also establish and recommend the ethical standards that should be applied to public procurement.

Several PPMD functions that are important in a corruption-prevention context are defined by the law as rights and not duties of the Department. For example, the Department has the right to monitor compliance of the procurement procedure with legislation, and it has the right to provide technical assistance, consultations and training (the rights of PPMD are defined in eight clauses of the law). On the other hand, PPMD has only three obligations: 1) to ensure examination of complaints regarding violations of public procurement procedures; 2) to prepare reports on government and municipal orders; 3) to prepare a special list of companies.

This disproportion between obligations and rights incorporates the risk that functions which are defined as rights may be assigned a secondary role in the work of the Department. This risk increases if the Department does not receive sufficient funding. To prevent this, the Department must receive sufficient funding to ensure that it is able to carry out all of its functions, and perhaps the law should also be amended to increase the number of obligations.

It should also be defined more precisely, how PPMD is to monitor compliance of procurement procedures with legislation, in cases where no complaints have been received. For example, it is currently not clear what authority the Department has in cases where media reports suggest serious public procurement violations by a specific institution. One of the most important questions is whether, in such cases, the Department has the authority to prevent awarding of a contract, if this has not yet been done. This and other questions concerning the authority of PPMD must be clarified.

Monitoring of political party financing. Experience in other countries and off-the-record conversations in Latvia suggest that funds which are gained by defrauding the State through manipulation of public procurement are occasionally used for illicit party financing. It is difficult to fight this kind of corruption because it is almost always sanctioned by influential political players. For this reason, improved control of political party financing could also have a positive side effect on the prevention of corruption in public procurement.

Criminal prosecution and penalisation of persons involved in corruption. Although criminal prosecution of corrupt officials is usually and rightfully not considered to be the best means of fighting corruption, various preventive measures will not be sufficiently effective without purposeful and proactive law enforcement initiatives. Bribery and other criminal offences must also be combated with repressive methods, and in Latvia this should be done more intensively than before.

CONCLUSION

In this policy analysis report, the intent was to analyse three aspects of corruption prevention, which have been discussed at great length in Latvia. Control of conflicts of interest, declaration of assets and income, and optimally regulated public procurement are but a few of the countless elements of anticorruption policy. Where these three elements are concerned, the report is one of many contributions to the public policy debate.

It is possible that in the next few years Latvia will join both the European Union and NATO. This means that in a global context our country will be judged by the standards of developed West European countries. Latvia will not be praised for being better than some of the other members of the former USSR, but rather it will be compared to other members of the European Union – Germany and Denmark, for instance. This situation increases the demands on our anticorruption policy. If this policy is to gain credibility in Latvia and in the European Union, it must fulfil three objectives.

First, it must ensure that conflicts of interest become unacceptable at all levels of state and local government, regardless of legal loopholes in one or the other law. Second, the Latvian government must clearly declare whether it is politically prepared to ensure the registration of property and income of the whole population. If the answer is yes, extensive and, possibly, unpopular measures will have to be taken to accomplish this – most logically, within the framework of the tax system. If the answer is no, then the idea of the initial declaration as a seemingly powerful anticorruption measure must once and for all be abandoned as a measure that is practically impossible to carry out. And third, all sensible measures that can prevent corruption in the public procurement system must be undertaken with perseverance and with a systematic approach.

The report concludes that anticorruption is a continual struggle, but that Latvia's entire future – and the future of each citizen – will be affected by the degree to which regulations can be effectively enforced, and more, the degree to which the pressures to not cheat can become self-generated. If that occurs, then Latvia can be assured a welcome into Western Europe and within the group of progressive nations worldwide.

APPENDICES

Appendix 1
ANTICORRUPTION FRAMEWORK DOCUMENT[1]

I. DEFINITION OF THE PROBLEM AND DESCRIPTION OF THE CURRENT SITUATION

Prevention of corruption is currently regulated by the Anticorruption Law, which sets out the persons who are to be regarded as public officials and the conditions that can lead to conflicts of interest and situations in which public officials can be unlawfully influenced. The law prescribes restrictions on the decision-making, supervisory, control, investigative and disciplinary functions of public officials, as well as restrictions on combining official duties and carrying out functions, awarding contracts, operating with public property and financial resources, accepting gifts and remuneration.

In accordance with this law, public officials are required to submit declarations of income to the State Revenue Service, which checks whether all public officials have submitted their declarations by the appointed deadline, whether they have properly filled them out, and whether the information provided is complete and correct. However, it should be pointed out that the declarations as such are not a means of preventing corruption. Their submitting and auditing is simply a supplementary measure to help eliminate opportunities for corruption, since their objective is to make public the financial situation of public officials, changes therein over the course of time, and areas of interests. For this reason, other measures are also needed for the prevention of corruption.

The investigation of crimes connected with corruption is the responsibility of the Financial Police, the State Police and the Public Prosecutor's Office.

The provisions of the Anticorruption Law and implementation thereof have repeatedly provoked discussions about the ambiguities of these provisions, which are open to

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[1] The Framework Document was approved by the Cabinet on August 8, 2000. This text has been taken from the Internet website http://www.pretkorupcija.lv Last viewed on January 19, 2002 (*author's note*).

different interpretations, about the inadequacy of the law in real-life situations, and about problems in controlling implementation of the law (the functions, possibilities, status and place in the public administration system of the State Revenue Service Corruption Control Department). For this reason, the law has been amended several times, but a number of the problems have, nevertheless, not been resolved.

The law defines corruption as the misuse of authority for personal financial or other gain, which is an extremely narrow definition that does not fully reflect the essence of corruption. As a result, it creates various ambiguities in the interpretation of corruption as such.

In view of the aforementioned, following Minister President's Instruction No. 105 of March 15, 1999 pertaining to a working group for questions concerning necessary amendments to regulatory enactments that deal with prevention of corruption, a working group was set up, headed by the State Secretary of the Ministry of Transport. The report on necessary amendments to regulatory enactments that deal with prevention of corruption, which was prepared by the working group, provides a definition of corruption that is based on both World Bank and European Council standpoints, defines the main causes of corruption, problems in the existing Anticorruption Law and the institutional system for prevention of corruption, and makes recommendations for improving regulatory enactments and institutional system.

The report on necessary amendments to regulatory enactments that deal with prevention of corruption was considered by the Cabinet of Ministers at the Cabinet meeting on June 1, 1999 (transcript No. 29, § 30). On the basis of this document and the decision taken on June 1, 1999 by the Cabinet, on December 1, 1999 the Anticorruption Council Secretariat, whose main responsibility is to ensure that the functions of the Anticorruption Council are carried out, was established. A working group was also set up to prepare a report on the necessary preconditions for an institution for prevention of corruption, as ordered by the Minister President on July 2, 1999. This report was reviewed at a meeting of the Anticorruption Council on October 20, 1999 (transcript No. 2, § 2), and the Secretariat of the Anticorruption Council was asked to continue work on establishing the necessary conditions for an anticorruption institution and detailing the functions of the institutions represented in the Council.

The report explained the need for an Anticorruption Bureau and made recommendations for the work of an independent anticorruption institution whose main tasks would be to fight and prevent corruption, to educate the public about corruption, and to control implementation of the Anticorruption Law and the Anticorruption Programme.

The aforementioned shows that the documents that have been prepared on the prevention of corruption already identify the problems in the current Anticorruption

Law and in the work of the institutions involved in fighting corruption. Not all of the problems outlined in these reports are receiving the attention needed to eliminate them.

So, for example, to this day, the question of how to determine whether the living standards of persons exposed to the risk of corruption are in keeping with the income of such persons has not been resolved. This is why a method must be developed to register initial assets and why the principle of legal presumption must be incorporated into the Criminal Procedures Code and the Administrative Sanctions Code.

Conclusions – A new law is needed to update the approach to corruption-prevention and conflict-of-interest issues. It is also necessary to improve the work of the institutions involved in fighting corruption.

A method must be developed for registering initial assets and the principle of legal presumption must be incorporated into the Criminal Procedures Code and the Administrative Sanctions Code. The fight against unlawful gains must be stepped up.

In view of the fact that bribes are often proffered to public officials by representatives of companies/corporations and organisations in the name and on behalf of these companies/corporations and organisations (hereinafter, organisations), it is also necessary to deal with the question of corporate liability for corrupt transactions. The Criminal Code holds only natural persons liable for such offences. However, in order to prevent future cases of bribery by a specific organisation and to make sure that the organisation as such is punished, administrative sanctions could be applied to a legal person in cases where a natural person has carried out an illegal transaction, either in the name or on behalf of the organisation, or due to lack of sufficient control resulting from obvious weaknesses in the organisational structure of the organisation.

This would also serve to improve conformity with the requirements of international documents (e.g., the European Council Criminal Law Convention on Corruption, the European Union Joint Action on Corruption in the Private Sector) as concerns the liability of legal persons for criminal offences involving corruption.*

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* In accordance with Section 18 "Corporate Liability" of the Criminal Law Convention on Corruption, each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
– a power of representation of the legal person; or
– an authority to take decisions on behalf of the legal person; or
– an authority to exercise control within the legal person;

II. THE CONSEQUENCES OF FAILURE TO ADDRESS THE PROBLEM

If nothing is done to improve the legal basis for preventing corruption, the ambiguities that lead to different interpretations of laws will remain. This will make it difficult to apply the laws and it will undermine public faith in the government's strategy for fighting corruption.

Furthermore, if the situation in which there is no sufficiently independent institution to control implementation of the Anticorruption Law continues, uncovering and investigation of cases of corruption will still not be effective enough.

Moreover, failure to address the question of registration of initial assets, introduction of the principle of legal presumption and corporate liability will mean that effective measures will not be taken to achieve significant changes in ways of preventing and fighting corruption.

III. STAGES IN DEALING WITH THE PROBLEM

1. After the Framework Document has been approved by the Cabinet, a working group must be set up to draft a new Anticorruption Law. The working group should include representatives of the Ministry of the Interior, the Prosecutor General's Office, the Secretariat of the Anticorruption Council, the Secretariat of the Minister for Special Assignments on Public Administration Reform, the State Revenue Service, the Ministry of Justice, the Association of Local Governments. Representatives of foreign aid projects (PHARE, and others) should also be involved.

This stage must be completed by the end of September 2000.

2. The draft of the Anticorruption Law must be submitted to the Cabinet of Ministers by March 2001.

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as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

Apart from the cases already provided for in Paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in Paragraph 1 has made possible the commission of criminal offences mentioned in Paragraph 1 for the benefit of that legal person by a natural person under its authority.

The European Union Joint Action on Corruption in the Private Sector prescribes similar conditions for corporate liability, but as possible measures of punishment it calls for preclusion from government subsidies or benefits, a temporary or sustained ban on commercial activities, court supervision.

3. As concerns the questions that are addressed in the Framework Document – the necessary legislative amendments must be drafted by the working group that has been set up, with co-option of experts should this be necessary, by March 2001.

III. DESCRIPTION OF NECESSARY LEGISLATIVE PROJECTS[2]

1. Revision of anticorruption regulations

A new Anticorruption Law

A completely new law on prevention of corruption is being drafted, taking into account the points listed below. The objective of this law is to provide a legal basis for the elimination of opportunities for corrupt conduct among public officials and for control of enforcement of the law by providing a legal basis for the institutions that are to carry out this function. This will improve the legal basis for prevention of corruption, and a uniform and rectified law will facilitate the application of legal norms.

The new Anticorruption law must deal with the following issues:

1. The law must provide comprehensive definitions for the following concepts:

a) the concept of "corruption," clarifying what is meant by this and providing a legal definition for this activity as concerns the public sector, which is:

"Corruption is bribery and any other activity carried out by a public official which results in overstepping of authority, misuse of authority and violation of restrictions on public officials, and which is aimed at gaining undeserved benefits for one's own self or for others."

This would also make it possible to avoid calling a formal conflict of interest corruption;

b) explication of the term "office." Otherwise, the difference between office and employment is disputable;

c) explication of the concept of "authority," which would also help to apply Section 318, "Misuse of Authority," of the Criminal Code;

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[2] This section should logically be numbered IV, but the original numbering has been maintained (*author's note*).

d) other concepts to be defined are: "conflicts of interest", "a situation that can be unlawfully influenced", "unlawful influence", "corrupt income", "relationships that create conditions conducive to corruption", "prohibitions that prevent public officials from finding themselves in corruptive situations";

e) the concept of "declarations";

f) the concept of "public official."

To define "public official," both a list of public officials as well as guidelines for identifying a public official should be provided to make it possible to apply the law to other persons involved in public administration and local government as well (further on in the law, it shall be stipulated that separate restrictions apply to such persons).

The result – the law will clearly name highest-ranking public officials, and provide lists of specifications for other public officials, which will distinctly define the circle of persons to whom the regulations shall be applied. Precise enumeration will reduce the likelihood of different interpretations of the law.

2. Scope of the law:

The new law, like the current Anticorruption Law, will list all public officials and prescribe restrictions for all public officials; however, it will take into consideration the status of each category of public officials.

This means that it will be defined which persons are to be considered as public officials, and the activities and conduct of each category of officials in situations that provide opportunities for corrupt conduct will also be defined along with the respective restrictions. As a result, one law will incorporate all questions that are connected with the prevention of corruption, i.e., all necessary definitions, restrictions, conduct in conflict-of-interest and other corruption-related situations, as well as the institutional structure that is necessary for a uniform system for dealing with the problem.

In addition to the above, the law will also regulate the question of the declarations of public officials, the procedure for submitting and auditing declarations, and the responsibilities of the institution that audits the declarations. The amount of information to be provided in the declarations will depend on the rank of the official – the higher the rank, the more detailed the information that must be provided in the declaration (this applies to the kin of officials as well).

The law is also expected to include an enumeration of the precise functions of officials and a more detailed section on conflicts of interest. It will also provide the legal basis

for the Anticorruption Bureau: status, functions, responsibilities, etc. (point 3 of the Framework Document, "Institutional system").

The law would anticipate drafting of an ethics code for public officials, not just for civil servants. This would set out the basic principles of conduct for public officials in accordance with international ethics codes for public officials. In anticipation of such a code, the law would have to stipulate a mechanism for implementation of the code and for control of implementation.

3. Institutional system:

The law prescribes establishment of an Anticorruption Council for the drafting of a national anticorruption strategy. The by-law of the Council is approved by the Cabinet, and the staff, by the Minister President.

In accordance with the recommendations contained in the report on conditions necessary for establishment of an anticorruption institution prepared by the working group set up following the July 2, 1999 instruction of the Minister President, an Anticorruption Bureau shall be established, which shall be charged with fighting corruption (planning, coordination, investigation and field work, review of complaints and other submissions, control of declarations), carrying out analytical and methodological functions (work with regulatory enactment projects), and education (legal and ethical education of the public and private sector on the prevention of corruption, information of the media). The Secretariat of the Anticorruption Council, which ensures that the functions of the Council are carried out, shall be incorporated into the Bureau.

The possible alternatives for the status of such a bureau within public administration has already been addressed in the report on conditions necessary for establishment of an anticorruption institution; therefore, the question of the status of such a bureau shall be decided pursuant to this report:

1) the bureau is independent, and its director is appointed by the *Saeima*,

2) the bureau is under the supervision of the Ministry of Justice; its director is appointed by the Cabinet,

3) the bureau is under the supervision of the Prosecutor General's Office; its director is appointed by the Prosecutor General.

Positive – One sufficiently independent institution is responsible for combating corruption, which means that work is coordinated and effective, and overlapping of the functions of those involved is avoided.

Negative – Establishment of an independent institution requires additional funds. The working group that prepared the report on the conditions necessary for establishment of an anticorruption institution calculated that 1,916,420 lats would be required for setting up and maintaining such a bureau. Of this sum, 458,600 lats would be one-off expenses, and 1,457,420 lats would be recurring yearly expenses for bureau maintenance. This sum could be reduced, if funds for the bureau were taken from existing institutions (State Police, Financial Police, Public Prosecutor's Office, Secretariat of the Anticorruption Council), since these structures would no longer be required to carry out anticorruption functions.

4. Methods for initial registration of assets:

The new law on prevention of corruption shall incorporate methods for the initial registration of assets, and the necessary amendments shall also be made to the Criminal Code and the Criminal Procedures Code.

2. Amendments to the Administrative Sanctions Code

In order to render the fight against corruption more effective, the Administrative Sanctions Code should be amended to include corporate liability for offences of corruption (see conclusion of Part 1 of the Framework Document).

The Administrative Sanctions Code shall stipulate that administrative sanctions are to be applied to legal persons for criminal offences committed by natural persons. This means that in cases where a natural person:

1) acting as representative of the legal person's administrative or executive body or as a member of such body, or

2) acting as representative of an association of persons without the status of a legal person or as a member of such association or as an authorised person thereof

has committed a criminal offence or an administrative offence, which has violated the functions of a legal person or association of persons, or with which the legal person or association of persons has acquired or sought to acquire financial gain, administrative sanctions may be applied.

Administrative sanctions shall be applied to legal persons, if a natural person has committed a criminal offence. A list of criminal offences shall be prepared (for example, bribery, money laundering, fraud) to which such sanctions may be applied.

A list is necessary, because a legal person may not be held liable for all manner of offences. The negative aspect of the list – it is susceptible to changes.

To make sure that the applied sanctions are effective and proportional, that they fulfil a preventive function and are conform with international documents, fines (higher than those for natural persons), exclusion from public procurement or withdrawal of other privileges, prohibition of commercial activities are sanctions that could be applied to legal persons or associations of persons.

Such sanctions would be applied once the liability of a legal person has been established, if the aforementioned facts are corroborated in the course of investigation and examination of the case.

3. Amendments to the Criminal Code and the Criminal Procedures Code

The Criminal Code should provide for liability for corruption in the case of arbitrators, since these persons have a special status – they are not public officials in the sense of the Anticorruption Law and they cannot be held liable as responsible representatives of a company/corporation, which means that they cannot be held liable for corrupt activities.* The question could also be resolved by applying the definition of a public official to arbitrators.

There is already a debate going on in the European Council on the liability of arbitrators, and it is possible that a protocol will be added to the European Council Criminal Law Convention on Corruption (signed by Latvia on January 27, 1999). In accordance with the Criminal Law Convention on Corruption, which Latvia signed on January 27, 1999, amendments are being prepared, which anticipate criminal liability for foreign officials, members of public assemblies, international courts and other international institutions, as well as a more precise definition of bribery in the public and private sector.

If unlawful gain is represented as being a criminal activity, then the Criminal Code should prescribe sanctions for public officials who are unable to provide proof of the origin of funds and property that exceed their income. In such cases, in addition to the

* In accordance with the Civil Procedures Code, a court of arbitration can be formed on an *ad hoc* basis and persons (arbitrators) appointed not as representatives of a company/corporation, but as private persons who also resolve cases as private persons and not as public officials or as representatives of a company.

declarations of public officials, declarations should also be required of other natural persons whose total assets exceed a specific sum. Such persons would be held liable for failure to submit declarations. This means that the Criminal Procedures Code should be amended to include a method for initial registration of assets and the principle of legal presumption.

4. Amendments to the Law on the State Revenue Service

It is necessary to make amendments to the Law on the State Revenue Service regarding the functions of institutions involved in the prevention of corruption and control of the Anticorruption Law.

Appendix 2
NEW YORK CITY CHARTER[1]
CHAPTER 68

Conflicts of Interest
(fragments)

§ 2600. Preamble. Public service is a public trust. These prohibitions on the conduct of public servants are enacted to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency.

§ 2601. Definitions.

As used in this chapter,

1. [..].

2. "Agency" means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to, the council, the offices of each elected official, the board of education, community school boards, community boards, the financial services corporation, the health and hospitals corporation, the public development corporation, and the New York city housing authority, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

3. "Agency served by a public servant" means (a) in the case of a paid public servant, the agency employing such public servant or (b) in the case of an unpaid public servant, the agency employing the official who has appointed such unpaid public servant unless

[1] Adopted in 1989.

the body to which the unpaid public servant has been appointed does not report to, or is not under the control of, the official or the agency of the official that has appointed the unpaid public servant, in which case the agency served by the unpaid public servant is the body to which the unpaid public servant has been appointed.

4. "Appear" means to make any communication, for compensation, other than those involving ministerial matters.

5. A person or firm "associated" with a public servant includes a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

6. "Blind trust" means a trust in which a public servant, or the public servant's spouse, domestic partner, or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant's spouse, domestic partner, and unemancipated child have no knowledge, and which meets requirements established by rules of the board, which shall include provisions regarding the independent authority and discretion of the trustee, and the trustee's confidential treatment of information regarding the holdings and sources of income of the trust.

7. "Board" means the conflicts of interest board established by this chapter.

8. "Business dealings with the city" means any transaction with the city involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter.

9. [..].

10. [..].

11. "Firm" means sole proprietorship, joint venture, partnership, corporation and any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board.

12. "Interest" means an ownership interest in a firm or a position with a firm.

13. [..].

14. "Member" means a member of the board.

15. “Ministerial matter” means an administrative act, including the issuance of a license, permit or other permission by the city, which is carried out in a prescribed manner and which does not involve substantial personal discretion.

16. “Ownership interest” means an interest in a firm held by a public servant, or the public servant's spouse, domestic partner, or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse, domestic partner, or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse, domestic partner, or unemancipated child, or in any blind trust which holds or acquires an ownership interest. The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.

17. [..].

18. “Position” means a position in a firm, such as an officer, director, trustee, employee, or any management position, or as an attorney, agent, broker, or consultant to the firm, which does not constitute an ownership interest in the firm.

19. “Public servant” means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.

20. “Regular employee” means all elected officials and public servants whose primary employment, as defined by rule of the board, is with the city, but shall not include members of advisory committees or community boards.

21. a. “Spouse” means a husband or wife of a public servant who is not legally separated from such public servant.

b. “Domestic partner” means persons who have a registered domestic partnership pursuant to section 3-240 of the administrative code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

22. [..].

23. "Unemancipated child" means any son, daughter, step-son or step-daughter who is under the age of eighteen, unmarried and living in the household of the public servant.

§ 2602. Conflicts of interest board.

a. There shall be a conflicts of interest board consisting of five members, appointed by the mayor with the advice and consent of the council. The mayor shall designate a chair.

b. Members shall be chosen for their independence, integrity, civic commitment and high ethical standards. No person while a member shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, hold any political party office, or appear as a lobbyist before the city.

c. [..].

d. Members shall receive a per diem compensation, no less than the highest amount paid to an official appointed to a board or commission with the advice and consent of the council and compensated on a per diem basis, for each calendar day when performing the work of the board.

e. [..].

f. Members may be removed by the mayor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

g. The board shall appoint a counsel to serve at its pleasure and shall employ or retain such other officers, employees and consultants as are necessary to exercise its powers and fulfill its obligations. The authority of the counsel shall be defined in writing, provided that neither the counsel, nor any other officer, employee or consultant of the board shall be authorized to issue advisory opinions, promulgate rules, issue subpoenas, issue final determinations of violations of this chapter, or make final recommendations of or impose penalties. The board may delegate its authority to issue advisory opinions to the chair.

h. The board shall meet at least once a month and at such other times as the chair may deem necessary. Two members of the board shall constitute a quorum and all acts of the board shall be by the affirmative vote of at least two members of the board.

§ 2603. Powers and obligations.

a. Rules. The board shall promulgate rules as are necessary to implement and interpret the provisions of this chapter, consistent with the goal of providing clear guidance regarding prohibited conduct. The board, by rule, shall once every four years adjust the dollar amount established in subdivision sixteen of section twenty-six hundred one of this chapter to reflect changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States bureau of labor statistics.

b. Training and education.

1. The board shall have the responsibility of informing public servants and assisting their understanding of the conflicts of interest provisions of this chapter. In fulfilling this responsibility, the board shall develop educational materials regarding the conflicts of interest provisions and related interpretive rules and shall develop and administer an on-going program for the education of public servants regarding the provisions of this chapter.

2. The board shall provide training to all individuals who become public servants to inform them of the provisions of this chapter, shall assist agencies in conducting ongoing training programs, and shall make information concerning this chapter available and known to all public servants. On or before the tenth day after an individual becomes a public servant, such public servant must file a written statement with the board that such public servant has read and shall conform with the provisions of this chapter.

c. Advisory opinions.

1. The board shall render advisory opinions with respect to all matters covered by this chapter. An advisory opinion shall be rendered on the request of a public servant or a supervisory official of a public servant and shall apply only to such public servant. The request shall be in such form as the board may require and shall be signed by the person making the request. The opinion of the board shall be based on such facts as are presented in the request or subsequently submitted in a written, signed document.

2. Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to a reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion; provided that such amended advisory opinion shall apply only to future conduct or action of the public servant.

3. The board shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party. The advisory opinions of the board shall be indexed by subject matter and cross-indexed by charter section and rule number and such index shall be maintained on an annual and cumulative basis.

4. Not later than the first day of September, nineteen hundred ninety the board shall initiate a rulemaking to adopt, as interpretive of the provisions of this chapter, any advisory opinions of the board of ethics constituted pursuant to chapter sixty-eight of the charter heretofore in effect, which the board determines to be consistent with and to have interpretive value in construing the provisions of this chapter.

5. For the purposes of this subdivision, public servant includes a prospective and former public servant, and a supervisory official includes a supervisory official who shall supervise a prospective public servant and a supervisory official who supervised a former public servant.

d. Financial disclosure.

1. All financial disclosure statements required to be completed and filed by public servants pursuant to state or local law shall be filed by such public servants with the board.

2. The board shall cause each statement filed with it to be examined to determine if there has been compliance with the applicable law concerning financial disclosure and to determine if there has been compliance with or violations of the provisions of this chapter.

3. The board shall issue rules concerning the filing of financial disclosure statements for the purpose of ensuring compliance by the city and all public servants with the applicable provisions of financial disclosure law.

e. Complaints.

1. The board shall receive complaints alleging violations of this chapter.

2. Whenever a written complaint is received by the board, it shall:

(a) dismiss the complaint if it determines that no further action is required by the board; or

(b) refer the complaint to the commissioner of investigation if further investigation is required for the board to determine what action is appropriate; or

(c) make an initial determination that there is probable cause to believe that a public servant has violated a provision of this chapter; or

(d) refer an alleged violation of this chapter to the head of the agency served by the public servant, if the board deems the violation to be minor or if related disciplinary charges are pending against the public servant.

3. For the purposes of this subdivision, a public servant includes a former public servant.

f. Investigations.

1. The board shall have the power to direct the department of investigation to conduct an investigation of any matter related to the board's responsibilities under this chapter. The commissioner of investigation shall, within a reasonable time, investigate any such matter and submit a confidential written report of factual findings to the board.

2. The commissioner of investigation shall make a confidential report to the board concerning the results of all investigations which involve or may involve violations of theprovisions of this chapter, whether or not such investigations were made at the request of the board.

g. Referral of matters within the board's jurisdiction.

1. A public servant or supervisory official of such public servant may request the board to review and make a determination regarding a past or ongoing action of such public servant. Such request shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

2. Whenever an agency receives a complaint alleging a violation of this chapter or determines that a violation of this chapter may have occurred, it shall refer such matter to the board. Such referral shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

3. For the purposes of this subdivision, public servant includes a former public servant, and a supervisory official includes a supervisory official who supervised a former public servant.

h. Hearings.

1. If the board makes an initial determination, based on a complaint, investigation or other information available to the board, that there is probable cause to believe that the

public servant has violated a provision of this chapter, the board shall notify the public servant of its determination in writing.[..].

2. If, after receipt of the public servant's response, the board determines that there is no probable cause to believe that a violation has occurred, the board shall dismiss the matter and inform the public servant in writing of its decision. If, after the consideration of the response by the public servant, the board determines there remains probable cause to believe that a violation of the provisions of this chapter has occurred, the board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred, or shall refer the matter to the appropriate agency if the public servant is subject to the jurisdiction of any state law or collective bargaining agreement which provides for the conduct of disciplinary proceedings, provided that when such a matter is referred to an agency, the agency shall consult with the board before issuing a final decision.

3. If the board determines, after a hearing or the opportunity for a hearing, that a public servant has violated provisions of this chapter, it shall, after consultation with the head of the agency served or formerly served by the public servant, or in the case of an agency head, with the mayor, issue an order either imposing such penalties provided for by this chapter as it deems appropriate, or recommending such penalties to the head of the agency served or formerly served by the public servant, or in the case of an agency head, to the mayor; provided, however, that the board shall not impose penalties against members of the council, or public servants employed by the council or by members of the council, but may recommend to the council such penalties as it deems appropriate. The order shall include findings of fact and conclusions of law. When a penalty is recommended, the head of the agency or the council shall report to the board what action was taken.

4. Hearings of the board shall not be public unless requested by the public servant. The order and the board's findings and conclusions shall be made public.

5. The board shall maintain an index of all persons found to be in violation of this chapter, by name, office and date of order. The index and the determinations of probable cause and orders in such cases shall be made available for public inspection and copying.

6. Nothing contained in this section shall prohibit the appointing officer of a public servant from terminating or otherwise disciplining such public servant, where such appointing officer is otherwise authorized to do so; provided, however, that such action by the appointing officer shall not preclude the board from exercising its powers and duties under this chapter with respect to the actions of any such public servant.

7. For the purposes of this subdivision, the term public servant shall include a former public servant.

i. Annual report. [..]

j. Revision.

The board shall review the provisions of this chapter and shall recommend to the council from time to time such changes or additions as it may consider appropriate or desirable. Such review and recommendation shall be made at least once every five years.

k.

Except as otherwise provided in this chapter, the records, reports, memoranda and files of the board shall be confidential and shall not be subject to public scrutiny.

§ 2604. Prohibited interests and conduct.

a. Prohibited interests in firms engaged in business dealings with the city.

1. Except as provided in paragraph three below,

(a) no public servant shall have an interest in a firm which such public servant knows is engaged in business dealings with the agency served by such public servant; provided, however, that, subject to paragraph one of subdivision b of this section, an appointed member of a community board shall not be prohibited from having an interest in a firm which may be affected by an action on a matter before the community or borough board, and

(b) no regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings with the city, except if such interest is in a firm whose shares are publicly traded, as defined by rule of the board.

2. Prior to acquiring or accepting an interest in a firm whose shares are publicly traded, a public servant may submit a written request to the head of the agency served by the public servant for a determination of whether such firm is engaged in business dealings with such agency. Such determination shall be in writing, shall be rendered expeditiously and shall be binding on the city and the public servant with respect to the prohibition of subparagraph a of paragraph one of this subdivision.

3. An individual who, prior to becoming a public servant, has an ownership interest which would be prohibited by paragraph one above; or a public servant who has an

ownership interest and did not know of a business dealing which would cause the interest to be one prohibited by paragraph one above, but has subsequently gained knowledge of such business dealing; or a public servant who holds an ownership interest which, subsequent to the public servant's acquisition of the interest, enters into a business dealing which would cause the ownership interest to be one prohibited by paragraph one above; or a public servant who, by operation of law, obtains an ownership interest which would be prohibited by paragraph one above shall, prior to becoming a public servant or, if already a public servant, within ten days of knowing of the business dealing, either:

(a) divest the ownership interest; or

(b) disclose to the board such ownership interest and comply with its order.

4. When an individual or public servant discloses an interest to the board pursuant to paragraph three of this subdivision, the board shall issue an order setting forth its determination as to whether or not such interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. In making such determination, the board shall take into account the nature of the public servant's official duties, the manner in which the interest may be affected by any action of the city, and the appearance of conflict to the public. If the board determines a conflict exists, the board's order shall require divestiture or such other action as it deems appropriate which may mitigate such a conflict, taking into account the financial burden of any decision on the public servant.

5. For the purposes of this subdivision, the agency served by

(a) an elected official, other than a member of the council, shall be the executive branch of the city government,

(b) a public servant who is a deputy mayor, the director to the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission, or who serves in the executive branch of city government and is charged with substantial policy discretion involving city-wide policy as determined by the board, shall be the executive branch of the city government,

(c) a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate, and

(d) a member of the council shall be the legislative branch of the city government.

6. For the purposes of subdivisions a and b of section twenty-six hundred six, a public servant shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the city.

b. Prohibited conduct.

1. A public servant who has an interest in a firm which is not prohibited by subdivision a of this section, shall not take any action as a public servant particularly affecting that interest, except that

(a) in the case of an elected official, such action shall not be prohibited, but the elected official shall disclose the interest to the conflicts of interest board, and on the official records of the council or the board of estimate in the case of matters before those bodies,

(b) in the case of an appointed community board member, such action shall not be prohibited, but no member may vote on any matter before the community or borough board which may result in a personal and direct economic gain to the member or any person with whom the member is associated, and

(c) in the case of all other public servants, if the interest is less than ten thousand dollars, such action shall not be prohibited, but the public servant shall disclose the interest to the board.

2. No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

3. No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

4. No public servant shall disclose any confidential information concerning the property, affairs or government of the city which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public, or use any such information to advance any direct or indirect financial or other private interest of the public servant or of any other person or firm associated with the public servant; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

5. No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged

in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

6. No public servant shall, for compensation, represent private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

7. No public servant shall appear as attorney or counsel against the interests of the city in any litigation to which the city is a party, or in any action or proceeding in which the city, or any public servant of the city, acting in the course of official duties, is a complainant, provided that this paragraph shall not apply to a public servant employed by an elected official who appears as attorney or counsel for that elected official in any litigation, action or proceeding in which the elected official has standing and authority to participate by virtue of his or her capacity as an elected official, including any part of a litigation, action or proceeding prior to or at which standing or authority to participate is determined. This paragraph shall not in any way be construed to expand or limit the standing or authority of any elected official to participate in any litigation, action or proceeding, nor shall it in any way affect the powers and duties of the corporation counsel. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

8. No public servant shall give opinion evidence as a paid expert against the interests of the city in any civil litigation brought by or against the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

9. No public servant shall,

(a) coerce or attempt to coerce, by intimidation, threats or otherwise, any public servant to engage in political activities, or

(b) request any subordinate public servant to participate in a political campaign. For purposes of this subparagraph, participation in a political campaign shall include managing or aiding in the management of a campaign, soliciting votes or canvassing voters for a particular candidate or performing any similar acts which are unrelated to the public servant's duties or responsibilities. Nothing contained herein shall prohibit a public servant from requesting a subordinate public servant to speak on behalf of a candidate, or provide information or perform other similar acts, if such acts are related to matters within the public servant's duties or responsibilities.

10. No public servant shall give or promise to give any portion of the public servant's compensation, or any money, or valuable thing to any person in consideration of having been or being nominated, appointed, elected or employed as a public servant.

11. No public servant shall, directly or indirectly,

(a) compel, induce or request any person to pay any political assessment, subscription or contribution, under threat of prejudice to or promise of or to secure advantage in rank, compensation or other job-related status or function;

(b) pay or promise to pay any political assessment, subscription or contribution in consideration of having been or being nominated, elected or employed as such public servant or to secure advantage in rank, compensation or other job-related status or function, or

(c) compel, induce or request any subordinate public servant to pay any political assessment, subscription or contribution.

12. No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.

13. No public servant shall receive compensation except from the city for performing any official duty or accept or receive any gratuity from any person whose interests may be affected by the public servant's official action.

14. No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.

15. No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

c. This section shall not prohibit:

1. an elected official from appearing without compensation before any city agency on behalf of constituents or in the performance of public official or civic obligations;

2. a public servant from accepting or receiving any benefit or facility which is provided for or made available to citizens or residents, or classes of citizens or residents, under housing or other general welfare legislation or in the exercise of the police power;

3. a public servant from obtaining a loan from any financial institution upon terms and conditions available to members of the public;

4. any physician, dentist, optometrist, podiatrist, pharmacist, chiropractor or other person who is eligible to provide services or supplies under title eleven of article five of the social services law and is receiving any salary or other compensation from the city treasury, from providing professional services and supplies to persons who are entitled to benefits under such title, provided that, in the case of services or supplies provided by those who perform audit, review or other administrative functions pursuant to the provisions of such title, the New York state department of health reviews and approves payment for such services or supplies and provided further that there is no conflict with their official duties; nothing in this paragraph shall be construed to authorize payment to such persons under such title for services or supplies furnished in the course of their employment by the city;

5. any member of the uniformed force of the police department from being employed in the private security field, provided that such member has received approval from the police commissioner therefor and has complied with all rules and regulations promulgated by the police commissioner relating to such employment;

6. a public servant from acting as attorney, agent, broker, employee, officer, director or consultant for any not-for-profit corporation, or association, or other such entity which operates on a not-for-profit basis, interested in business dealings with the city, provided that:

(a) such public servant takes no direct or indirect part in such business dealings;

(b) such not-for-profit entity has no direct or indirect interest in any business dealings with the city agency in which the public servant is employed and is not subject to supervision, control or regulation by such agency, except where it is determined by the head of an agency, or by the mayor where the public servant is an agency head, that such activity is in furtherance of the purposes and interests of the city;

(c) all such activities by such public servant shall be performed at times during which the public servant is not required to perform services for the city; and

(d) such public servant receives no salary or other compensation in connection with such activities;

7. a public servant, other than elected officials, employees in the office of property management of the department of housing preservation and development, employees in the department of citywide administrative services who are designated by the commissioner of such department pursuant to this paragraph, and the commissioners, deputy commissioners, assistant commissioners and others of equivalent ranks in such departments, or the successors to such departments, from bidding on and purchasing any city-owned real property at public auction or sealed bid sale, or from purchasing any city-owned residential building containing six or less dwelling units through negotiated sale, provided that such public servant, in the course of city employment, did not participate in decisions or matters affecting the disposition of the city property to be purchased and has no such matters under active consideration. The commissioner of citywide administrative services shall designate all employees of the department of citywide administrative services whose functions relate to citywide real property matters to be subject to this paragraph; or

8. a public servant from participating in collective bargaining or from paying union or shop fees or dues or, if such public servant is a union member, from requesting asubordinate public servant who is a member of such union to contribute to union political action committees or other similar entities.

d. Post-employment restrictions.

1. No public servant shall solicit, negotiate for or accept any position

(i) from which, after leaving city service, the public servant would be disqualified under this subdivision, or

(ii) with any person or firm who or which is involved in a particular matter with the city, while such public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the city.

2. No former public servant shall, within a period of one year after termination of such person's service with the city, appear before the city agency served by such public servant; provided, however, that nothing contained herein shall be deemed to prohibit a former public servant from making communications with the agency served by the public servant which are incidental to an otherwise permitted appearance in an adjudicative proceeding

before another agency or body, or a court, unless the proceeding was pending in the agency served during the period of the public servant's service with that agency. For the purposes of this paragraph, the agency served by a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate.

3. No elected official, nor the holder of the position of deputy mayor, director of the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission shall, within a period of one year after termination of such person's employment with the city, appear before any agency in the branch of city government served by such person. For the purposes of this paragraph, the legislative branch of the city consists of the council and the offices of the council, and the executive branch of the city consists of all other agencies of the city, including the office of the public advocate.

4. No person who has served as a public servant shall appear, whether paid or unpaid, before the city, or receive compensation for any services rendered, in relation to any particular matter involving the same party or parties with respect to which particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities.

5. No public servant shall, after leaving city service, disclose or use for private advantage any confidential information gained from public service which is not otherwise made available to the public; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

6. The prohibitions on negotiating for and having certain positions after leaving city service, shall not apply to positions with or representation on behalf of any local, state or federal agency.

7. Nothing contained in this subdivision shall prohibit a former public servant from being associated with or having a position in a firm which appears before a city agency or from acting in a ministerial matter regarding business dealings with the city.

e. Allowed positions.

A public servant or former public servant may hold or negotiate for a position otherwise prohibited by this section, where the holding of the position would not be in conflict with the purposes and interests of the city, if, after written approval by the head of the

agency or agencies involved, the board determines that the position involves no such conflict. Such findings shall be in writing and made public by the board.

§ 2605. Reporting.

No public servant shall attempt to influence the course of any proposed legislation in the legislative body of the city without publicly disclosing on the official records of the legislative body the nature and extent of any direct or indirect financial or other private interest the public servant may have in such legislation.

§ 2606. Penalties.

a. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter, involving a contract work, business, sale or transaction, has occurred, the board shall have the power, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, to render forfeit and void the transaction in question.

b. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter has occurred, the board, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, to impose fines of up to ten thousand dollars, and to recommend to the appointing authority, or person or body charged by law with responsibility for imposing such penalties, suspension or removal from office or employment.

c. Any person who violates section twenty-six hundred four or twenty-six hundred five of this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall forfeit his or her public office or employment. Any person who violates paragraph ten of subdivision b of section twenty-six hundred four, on conviction thereof, shall additionally be forever disqualified from being elected, appointed or employed in the service of the city. A public servant must be found to have had actual knowledge of a business dealing with the city in order to be found guilty under this subdivision, of a violation of subdivision a of section twenty-six hundred four of this chapter.

d. Notwithstanding the provisions of subdivisions a, b and c of this section, no penalties shall be imposed for a violation of paragraph two of subdivision b of section twenty-six hundred four unless such violation involved conduct identified by rule of the board as prohibited by such paragraph.

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