



# **DEVELOPMENT OF SYSTEMATIC MEASURES TO PREVENT THE CONFLICT OF INTERESTS**

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## ANNOTATION

**Aim of the Project:** Development of action framework for Conflicts of Interests prevention as a preventative tool for corruption level reduction.

Object of the Research – Conflicts of Interests in the public service and legal regulations, targeted at Conflicts of Interests prevention (in accordance with TS).

**Methods used in work:** This research was performed based on systematic approach. To resolve the pre-set tasks the following scientific tools were used, such as systematic analysis methods and models, experts' evaluation, logical and comparative analysis methods. Significant place in the research was granted to studying the foreign countries experience in practical settlement of Conflicts of Interests issues, what allowed getting much more solid results.

**Novelty:** Based on the systematic approach, critical analysis of legislation and established legal practice in the RoK and foreign countries was performed for the sphere of Conflicts of Interests settlement in the public service.

**Results of the work:**

- Legal regulations' conflicts and collisions were revealed as a result of the performed analysis of the current legislation in the sphere of Conflicts of Interests settlement in the public service;
- Conflicts of Interests appearance risks were defined while performing trust management and premises rental in the public service;
- preparation of the draft projects for changes and the amendments in the legislative acts of the RoK “For corruption termination” and “For public service”, Ethics code for public official and other legislative acts, devoted to the Conflicts of Interests settlement, including while performing the trust management;
- based on analysis of international experience, an action plan was defined for Conflicts of Interests management in the public service;
- as per results of experts survey, efficiency evaluation was made for accepted actions and recommendations were received for research subject;
- specific proposals were developed for Conflicts of Interests institution improvement in the public service.

## ABBREVIATION AND DESIGNATIONS

A list of used abbreviations:

ACSA	Agency for Civil Service Affairs
JSC	Joint Stock Companies
ACA	Anti-Corruption Agency
WB	World Bank
CC	Civil Code
GSC	Group of States against Corruption
ICT	Information-communication technologies
CI	Conflicts of Interests
UN	United Nations
OECD	Organization of Economic Cooperation and Development
UN DP	United Nations Development Program
RGE	Republican Government Enterprise
RoK	Republic of Kazakhstan
EC	European Council
LLP	Liability Limited Partnership

## INTRODUCTION

In this research, the issues of Conflicts of Interests settlement and prevention in the public service were reviewed, with specific attention paid to trust management and premises rental institution.

Existing established legal practices demonstrate absence of effective mechanism, assuring efficient prevention and settlement of Conflicts of Interests in the public service.

The aim of this research consists of development of systematic actions to prevent Conflicts of Interests as a preventative tool for corruption level reduction.

The object of the research – Conflicts of Interests in the public services and legal regulations, targeted at Conflicts of Interests prevention (according to TS).

Achievement of the pre-set aim shall be performed by sequential solution of the following tasks:

- to study and analyze recognized legislative backgrounds of the Conflicts of Interests settlement institution, to reveal strong and weak points;
- to analyze efficiency of trust management institution application in the public service;
- to make a review for international experience, including Estonia, Georgia and some OECD countries, and including experience of international organizations (UNDP, OECD, World Bank and others) in trust management, premises rental and other issues in Conflicts of Interests settlement area;
- to develop recommendations for Conflicts of Interests settlement institution improvement.

**In the first chapter**, the notions and the content of the Conflicts of Interests institution were reviewed in terms of the public service and the analysis is made for the experience of the international organizations and the foreign countries.

Additionally, in this chapter, we described the essence and the nature of the Conflicts of Interests appearance from the viewpoint of ethics and the law, main pre-conditions and conditions for efficient prevention and regulation of the Conflicts of Interests based on the results of the experimental analysis of the researchers in this sphere.

In line with that we performed an analysis of legislation and the law applying practice of the foreign countries, and also of documents of international organizations in the Conflicts of Interests sphere; as per the results of the analysis we defined the measures to improve the Conflicts of Interests settlement institution with consideration of the specifics of the government administration system in the RoK.

**The second chapter** is devoted to the development of systematic actions for Conflicts of Interests prevention and trust management institution improvement.

We brought specific attention to differentiation of definition of notions “Conflicts of Interests” in the public service sphere, specified by the existing legislation of the RoK.

We justified that the content of separate Articles in the legislative acts of the RoK “For Public service” and “For corruption termination” does not reflect in the necessary details the most important aspects of the Conflicts of Interests institution, introduces some sort of misunderstanding in the part of differentiating the preventative actions and settling Conflicts of Interests, unjustifiably provides independence in selection of “other means for Conflicts of Interests elimination”, what carries in itself the corruption risk. Also, this chapter includes an analysis of the trust management institution efficiency for the public official property, review of the results of the experts’ interviewing and analysis of the international experience in settlement of the Conflicts of Interests, including performance of the trust management and the premises rental.

Relevance and necessity of Conflicts of Interests settlement institution development were defined with consideration of the leading international practices and standards, and domestic experts’ evaluations.

**A conclusion** demonstrates major findings of the research.

A research was performed on the background of the systematic approach. To resolve the pre-set tasks the following scientific tools were used, such as systematic analysis methods and models, experts’ evaluations and international comparisons, logical and comparison analysis methods. An important place in the research was allocated to the studying of the foreign countries experience in Conflicts of Interests settlement practice, what enabled collecting more solid results.

An information base includes legislative acts of the Republic of Kazakhstan, RoK subjects, foreign countries, materials of Organization for Economic Co-operation and Development, UNDP, World Bank, GSA and etc.

The report consists of introduction two chapters, conclusion, list of used sources and attachments.



## CHAPTER 1. CONFLICTS OF INTERESTS SETTLEMENT IN THE PUBLIC SERVICE: THEORETIC-METHODOLOGICAL BACKGROUNDS OF THE RESEARCH

### 1.1 The Notion and The Essence of the Conflicts of Interests in the Public Service

An institution of Conflicts of Interests settlement in the public service represents one of the key mechanisms for corruption termination and the most significant aspect of the public service institution improvement.

An analysis of the Conflicts of Interests issues points at its double nature in its understanding – from one side, it is directed at corruption prevention, and from other side – public employees ethics improvement and appropriate performance of official duties.

In the contemporary literature, there are multiple definitions and explanations of the term “Conflicts of Interests”. The background of all definitions keeps a conflict between the public property and personal interests of the public officials, where personal interests of the public official can inappropriately affect upon execution of his official duties and responsibility.<sup>1</sup>

It shall be highlighted, that for further analysis of Conflicts of Interests settlement institution, it is necessary to clarify, what shall be the meaning of term “Conflicts of Interests”. This is particularly important, because the tendency of confusing the Conflicts of Interests with actual corruption or unethical behavior is widely acknowledged. For example, the international organizations and legislation of foreign countries (*Great Britain, Canada, The Czech Republic, and other OECD countries*) define the Conflicts of Interests in the following way.

In the UN Convention issued against corruption, the terms “interests divergence” and “interests’ collision”. Specifically, clause 4 of the article 7 of the UN Convention states, that all countries-participants shall strive for, in accordance with main principles of their legislation, formation, support and also reinforce such actions, which assist in transparency and also prevents from interests’ collision appearance.<sup>2</sup>

In the UN Manual “Anti-corruption toolkit” (*United Nations Anti-Corruption Toolkit*) it is clearly stated, that many forms of corruption are related to creation or application of certain conflict between professional duties of the corrupted person and his personal interests. Acceptance of bribes creates such a conflict of interests.<sup>3</sup>

In the OECD Manual (*OECD Toolkit*) for Conflicts of Interests management in the public sector, the following definition is given as below: “*Conflicts of Interests consist of a conflict between public duty and personal interests of the public official, wherein a personal interest of the public official might in*

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<sup>1</sup> <http://www.oecd.org/gov/ethics/49107986.pdf>

<sup>2</sup> [https://www.un.org/ru/documents/decl\\_conv/conventions/corruption.shtml](https://www.un.org/ru/documents/decl_conv/conventions/corruption.shtml)

<sup>3</sup> UN manual «Anti-Corruption tool» (*United Nations Anti-Corruption Toolkit*)

*inappropriate way affect upon performance of his official duties and responsibility”.*<sup>4</sup>

In the Recommendations made for the Council of Europe Committee of Ministers (Council of Europe, Committee of Ministers Recommendation No. R(2000) 10) for countries-participants, the Conflicts of Interests shall be understood as: “*Conflicts of Interests appear when a public official has a personal interest, capable of affecting upon or demonstrating a capability of affecting upon credibility and fairness of the public official while performing by him of his own official duties*”.<sup>5</sup>

In the legislation of the advanced foreign countries, the following definitions are in use.

In accordance with the United Kingdom Ministerial Code (Ministerial code), the Ministers shall make sure, that no conflict will appear or might appear in a sufficient measure between official duties of these official employees and their personal, economic and other interests. As a confirmation, they have to release a declaration of interests, which shall be published on an annual basis twice in 2 copies.<sup>6</sup>

France Act for transparency in public life (Act no. 2013-907 on transparency in public life) sets original regulation for Conflicts of Interests prevention problem. The article 2 of the Legislative Act contains the following definition: “*Conflicts of Interests – mean any environment, leading to clashing of public interests and personal interests, capable of breaking independent, fair and also just performance of this or another public function*”.<sup>7</sup>

In the Act for Conflicts of Interests in Canada (Conflict of Interest Act) there is a definition given for Conflicts of Interests as a situation, where a public official, keeping the position and performing public functions, and which provides this public official an opportunity of pushing his own personal interests, individual interests of his family members, friends or other people.<sup>8</sup>

The Act in the legislation of Portugal, which regulates the incompatibility and disqualification to be applied to the public officials (Law no. 28/95) includes short explanation of the Conflicts of Interests term, where it is stated, that such kind of a problem represents an opposition for performance of public duties by the public official, which leads to the adjoining of public and his personal interests.<sup>9</sup>

In the Czech Republic legislation (*Conflict of Interest Law*), the conflict between public interests and personal interests shall be understood as a behavior of the public official or hesitation of the public official to act, which challenges the trust in him / in his credibility, and as a result of which the public official misuses his position with the aim to gain illegal advantages for himself or other person.<sup>10</sup>

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<sup>4</sup> Tool-kit for Conflicts of Interests management in the public center, OECD

<sup>5</sup> <https://rm.coe.int/16806cc1ec>

<sup>6</sup> <https://www.gov.uk/government/publications/ministerial-code>

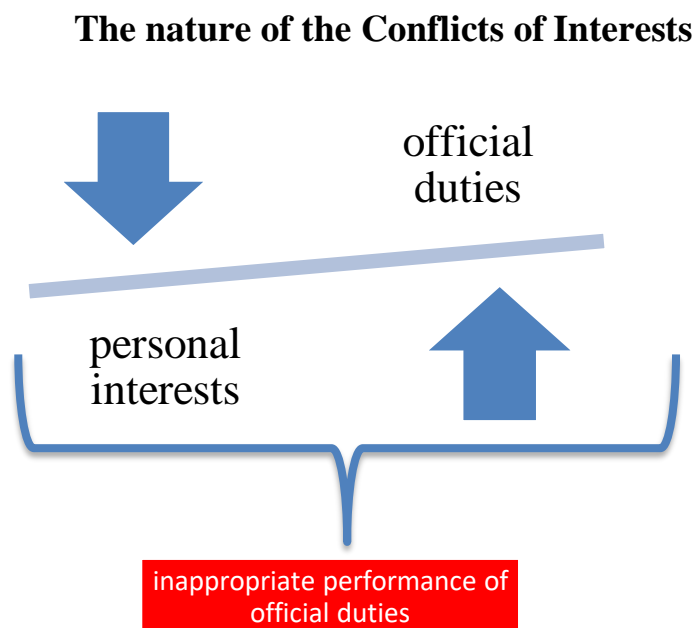
<sup>7</sup> <http://europam.org/?module=legislation&country=France>

<sup>8</sup> <https://laws-lois.justice.gc.ca/eng/acts/c-36.65/>

<sup>9</sup> <http://www.oecd.org/gov/ethics/2731886.htm>

<sup>10</sup> «Conflicts of Interests and how to regulate them». U4 Anti-Corruption Resource Center, 2008

Figure 1



To summarize based on given above definitions of the Conflicts of Interests, as it was earlier indicated, in the background of the Conflicts of Interests there is always a contradiction between personal and public interests of the public official, wherein his personal interest can affect upon inappropriate performance of official duties.

Simultaneously, in the scientific literature the essence of the Conflicts of Interests is demonstrated from other positions.

M. Philp in his book “Definition of political corruption” indicated, that people, holding the public positions, inevitably have several interests. Those interests are related to various aspects of personal life, and with duties, related to their position, which they shall perform in public interests. The notion of “Conflicts of Interests” shall be related to the risk, that some of those interests might conflict, and mutilate their decisions and ways of performing their public duties by them.<sup>11</sup>

As per the opinion of some researchers, such as D.A.Amodio, E.Harmon-Johns and P.Dewine, the difficulty in defining the Conflicts of Interests is represented by the fact, that only separate public official can know about his own interests and any potential conflicts, what can lead to the problem with asymmetric information. Exactly that is why for successful regulation of this problem, it is necessary for public officials to acknowledge the conflicts and to try to protect their decisions from inappropriate impact.<sup>12</sup>

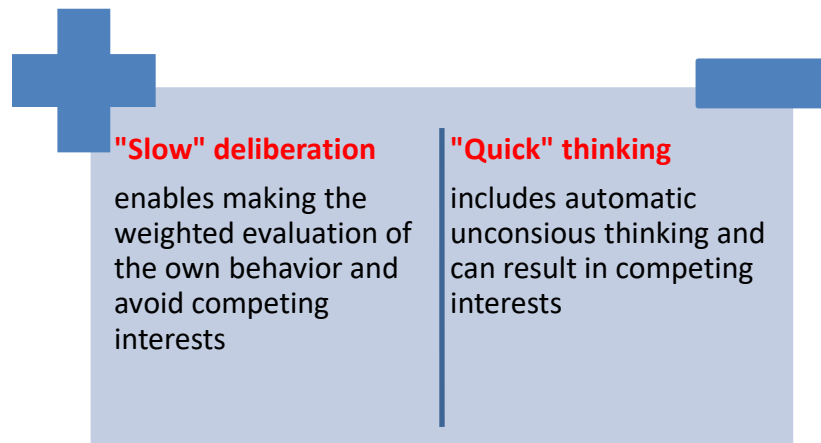
The conclusion, coming out from scientists’ opinion, allows statement that civilians will to some extent trust public officials in regulation of their own Conflicts of Interests.

<sup>11</sup> M.Philp (1997). «Definition of political corruption». Political Studies, 1997

<sup>12</sup> D.M Amodio, E.Harmon-Johns and P.Dewine. «Individual differences in activation and control of affective racial prejudices». Journal of personality and social psychology, (2003)

However, the researches in the psychology area doubt the capability of public officials to make weighted evaluations of their own behavior stating, that the major part of the time people are involved into automatic or “quick” thinking, and not into “slow” deliberation. “Quick” thinking leads to automatic human behavior, based on unobvious opinion.<sup>13</sup>

Figure 2



The works of M.H.Bazermann and A.Tenbrunsel include the thought about unconscious opinion, that, in its turn, might represent the result of “quick thinking”, which impact on public official actions, without waking up reflective perception. Such opinions might negatively affect upon the individual evaluations and judgements of people.<sup>14</sup> The public officials might subconsciously accept their perceptions as the society’s interests and bring up the conflict. Alternatively, while making the decision they might be headed by their own opinion – for example, based on a gender, race, religious beliefs and age – and might in fact reinforce the discrimination model.

For example, when hiring people to work the public official can make a wrong decision in relation to some candidates due to their belonging to the definite religion or a race, guided by their own opinions. At that, he might not know that he brought damage to society’s interests by not hiring to public service, just as an example, of a more competent employee. This arises questions with reference to whether it is possible to trust he opinion of public officials about their own credibility.

In relation to this, many countries almost refused to entrust public officials with making such opinions, instead of that they propose to try to remove Conflicts of Interests by defining of the “incompatibility”. In many countries, the public officials are not allowed to own companies, to have second job, to hire relatives as personnel or to become member of the political parties. Parliament members are often prohibited to perform duties of mayor at the same time.

<sup>13</sup> D. Kaneman «Think quickly and slowly». London: Macmillan, 2011

<sup>14</sup> M.H.Bazerman, A.Tenbrunsel. «Ethical breakdowns». Harvard Business Review, 2011

Researchers revealed the phenomenon of the “motivated reasoning”, when person’s personal interest changes the perception of the reality, and people might justify the corruption actions to themselves and others.<sup>15</sup>

In the public services, those risks can become especially extreme due to the number of the situation effects; the public officials often face extreme ethical dilemmas. Ambiguity and delicacy, present in many Conflicts of Interests situations, can mean that public officials justifies the potential violations of the conscientiousness by describing the problem in a certain way or by highlighting absence of clarity with reference to what action plan shall be put in use. In such a way, ambiguity, as it comes out, serves as “a cover” for people, taking precarious actions, but requesting plausible denial.

Work of Feldman and other researchers proposes that some people identify themselves as “good people” and consider themselves as more moral, credible and law-abiding, than they are in reality.<sup>16</sup> People with such perception of themselves might be specifically good in ignoring or justifying their unethical behavior and fail to react on typical forms of regulation. If politicians and public officials with greater probability will consider themselves as “good people”, this can affect upon their ability to judge accurately their own behavior.

In fact, the data about whether governmental public officials are oriented at public interests is questionable. Some scientists find proves that civilians, moved by greater financial benefit, than the sense of the public service, make their path to the governmental bureaucracy – with the intention to use public position for illegal wealth accumulation.<sup>17</sup>

Some researches demonstrate, that public officials sometimes are sensitive to society perception, and that this might affect upon their own behavior. The researchers Zamir and Suliceanu-Kenan revealed, that the more it is clear for public official, that his interests disagree with society interests in general, the less possible it is that he will give preference to his own interests.<sup>18</sup>

In the experiment of the group of researchers, where “the participant” of the experimental group demonstratively cheats when performing the tasks, the attitude of other members of the experiment to the unethical behavior varies depending on whether “this participant” represents “an own” or “an opposite” group. If the cheater (“the participant”) is a member of the “opposite” group, then other members of the experiment will behave more ethically themselves, but, if the cheater (“the participant”) – one of themselves, then other members will behave less ethically.<sup>19</sup> This demonstrates that psychological proximity to the cheater lets others to behave less ethically.

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<sup>15</sup> Yu.Feldman and E.Halali. «Regulating “good” people in the situations of hidden Conflicts of Interests ». Journal of Business Ethics, 2019

<sup>16</sup> Yu.Feldman. «The Law of good people: disputing the government authority to regulate the human behavior ». Cambridge: Cambridge University Press, 2018

<sup>17</sup> M.Klashnya, A.T Little and Jh.A.Taker. «Traps of political corruption». Political Science Research and Methods, (2016)

<sup>18</sup> E.Zamir, R.Sulitseanu - Kenan. «Explanation of lucrative behavior of politicians, tuned on public opinion ». Public Administration Review, 2018

<sup>19</sup> F.Jeeno and A.D.Galinskiy. «Dishonesty: when psychological closeness creates distance from moral compass». Organizational Behavior and Human Decision Processes, 2012

All this says that perception and expectation relative to members' behavior probably will have significant impact on individual behavior.

With consideration of complications with conflicts revealing, regulating systems often set regulations for Conflicts of Interests in the behavior codes and in a significant manner rely on transparency and disclosure of information about interests and assets.

For the member of Parliament the behavior codes usually are made and checked by their members in the Parliament; alleged violations might be investigated from the outside, but the decision on sanctions introduction almost always remains as a Parliament privilege. This reflects a historical concern with saving the independence of the law-making authority from the executive authority and its freedom to bring the government to justice, without fearing the vindictory punishment.<sup>20</sup>

However in it, more attention is granted to the ability of the public official to make a judgement about presence of conflicts and about what actions shall be taken, as an example, shall the interest be claimed and when to refuse from certain meetings and decisions. This requests them to not only reveal and evaluate own Conflicts of Interests, but to evaluate how the risk will be reviewed by the society. This, in its turn, means that the public officials shall consider if the society representatives can percept such a risk – in other words, their behavior shall comply with the requirements of the civil society.

Exactly that is why, at this moment of time the requirement of the society to the behavior of the public officials became a fundamental aspect in Conflicts of Interests settlement.

Conflicts of Interests might appear when transferring public employees between public and private sectors (see Table 1), what can lead to the number of potential risks of corruption.<sup>21</sup>

Table 1

<b>Description</b>	<b>Problem / violation</b>
Misusing powers with the aim to get the benevolence of the potential future employer	Misusing public position, potential bribe
Impacting past employees for implementation or formation of policy in the interest of the new employer	Explicit impact or take-over
Receiving financial advantage from a status or knowledge, received at the public position	Speculation
Represents political position, directly opposite to government position, earlier represented government in the same issue	Transfer to other side and application of confidential information

<sup>20</sup> E.David-Barett. «Regulating parliament members' behavior in terms of Europe democratization». Parliamentary Affairs, 2015

<sup>21</sup> I.Blanes, Jh.Vidal, M.Drak and K.Fon-Rozen. «Lobbyists of the circling door». American Economic Review, 2012

Application of own powers in the public position with benefits to company or industry, where he previously worked	Recognized take-over
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*Firstly*, the public official can use his power during his stay in position with the aim to form policy or decision in a favor of a certain company aiming at getting sympathy from this company and in such a way to open a path to the future work.

*Secondly*, the former clerk, who is now working in the company, might influence his past colleagues, so that they make decision in the interest of the company. The similar problem comes out due to hiring to public service, when people, already hired to public positions, push the interests of the past employer.

*Thirdly*, a person might gain financial advantages from status, knowledge and information, received at the public position. Such speculation can take forms of the insider trade. For example, purchasing or selling by someone, possessing an insider information about financial credit instruments, the value of which is under impact of the public disclosure of the insider information in the market.

*Fourthly*, a person might leave the public position and gets hired to the private company, where as instructed he has to make a stand against the government position with reference to the issue, he earlier represented in the government. This is quite a problem too, because a person might have had an access to the confidential information in the government.

*Fifthly*, the public officials might be unlimitedly sensitive to sectors and industries, which they have to regulate, if they were hired from that industry. Often there are solid arguments proving benefits of accepting to work of a person from private sector, when special knowledge is required in the certain field. On the other had this will also mean, than regulating agencies tend to feel empathy for the industry with the disadvantage to the public interests.

At the same time there might be other reasons named, leading to Conflicts of Interests:

- independent work (for example, using public position to ensure a contact with the private consulting company);
- receiving privileges (bribes, significant gifts – other);
- trading power (benefits exchanged with power application);
- using employer’s property for personal aims (stealing office supply for home use);
- using confidential information for personal aims;
- работа по совместительству или подработка;
- after completion of working career, (a person resigned from work in the public and private sector and starts business in the same district).

Regulation of same kinds of Conflicts of Interests by prohibiting for public officials to take certain positions after resigning from public position represents an option, but has a number of disadvantages. Usually in the Western countries, there is a temporary period of “cooling down”, when separate public officials cannot perform certain types of works.<sup>22</sup> The duration of the period can be changed

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<sup>22</sup> <https://www.gov.uk/government/organisations/advisory-committee-on-business-appointments>



depending on risk, associated with the public official – higher ranked public officials might be blocked for longer periods. Similarly, it is possible to indicate the kind of activity, from which the public official shall be excluded to avoid specific lobbying.

In the Great Britain, as an example, the regulations were very soft and in many ways depended on a trust in correct doings of public clerks and politicians. Only after 2010, the Ministers were prohibited to lobby government after releasing the position (during two years). The Ministers have to consult with Consultative agency for job assignments in work practice after leaving the Cabinet, similarly to highly ranked public officials, when they want to release their positions.<sup>23</sup>

All around the world, the governmental policy became more complicated and at the moment the public officials more often lack the relevant experience in solving the tasks pre-set for them with reference to policy development. Simultaneously, more often they are requested to base the policy using detailed proofs.<sup>24</sup> Such combination makes them more dependent from consulting with the external subjects (whose independency is difficult to guarantee) and more exposed to relevant pressure of lobbying and Conflicts of Interests.

Here, it is vitally important to develop group identity, which is committed to high professional and ethical standards, to assist separate officials to stay protected from inappropriate influence.

A group of researchers performed an experiment to check the influence on professionals with a certain sphere of knowledge – in this case on art experts (professionals and non-professionals).<sup>25</sup> Their results demonstrate that people within the frames of the profession might be better, than non-professionals, act without prejudice and avoid influence of others' interests upon their opinions. The experiment supposes that there is an ability existing to develop the idea of the professional standards for stimulation of certain kinds of opinions. Thus, one of the political ways for anti-corruption efforts might be in raising the professional prestige, related to the work of public officials, application of the professional norms and standards, applicable to public position mission.

### **The conclusions for the Chapter**

This Chapter was devoted to studying of a list of definitions, given by contemporary foreign legislative acts and opinions of researchers, related to Conflicts of Interests and their regulation methods. The tendencies in the public service increased the frequency and complexity of Conflicts of Interests settlement, what significantly complicated the task to separate interests and potential impacts upon public officials' behavior.

The Chapter demonstrated the problem with individual opinion for reduction of risks, related to Conflicts of Interests. Researches in the psychology sphere and behavioral science warned us about some rough real facts, related to ethic

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<sup>23</sup> T.M Lapira and H.F.Thomas. «Lobbyists of circling door and representation of interests». Interest Groups & Advocacy, 2014

<sup>24</sup> P.Kerni. «Development of policies based on facts». London: Springer, 2016

<sup>25</sup> W.Kirk, A.Harvi and P.R.Montegu. «Professionalism in the discipline area protects from prejudice of perception due to financial help». Proceedings of the National Academy of Sciences, 2011



decisions making problem even for people, who highly evaluate the professional ethics. When public officials consider themselves as “good people”, this might reduce the possibility, that they classify their behavior as corrupted, and consequently, they are less sensitive to the traditional regulation approaches, based on complying with regulations and sanctions.

This results in a statement, that in multiple contexts, especially when corruption gets a systematic feature, the public officials do not recognize their behavior as illegal and can provide detailed reports on why it is not just applicable, but beneficial for the society as well.

It is also specified there that there are nuances with reference to the requirements of the society set forth for the behavior of the public officials for Conflicts of Interests settlement. This approach is based on external evaluation of conflict appearance risk. This reflects the actual concerns with the maintaining the social trust in public administration.

In the section, there were definitions given for the different types of conflicts, which can appear, and a review was made for the proofs of how they reveal themselves in practice.

Conceptually, the Conflicts of Interests are based on differences between public and private duties. In the sphere of out-sourcing, public-private partnership institution development and rotation of personnel, differences between public and private sectors corroded, and the task of dividing them became much more complicated.

Conflicts of Interests in the public position are as unavoidable, as the complexity, which stands in our way to manage them. Explicit behavioral codes and regulations, registers of risks and declarations with assets and obligations can serve the aim in installation of expected standards and warn that compliance with requirements is valued.

As it was indicated in the Chapter, development of professional body of public service might have a beneficial impact upon Conflicts of Interests settlement institution. Training in professional standards for public officials shall concentrate more on natural human difficulties, related to avoidance of prejudice in the public position. This shall provide people with skills and possibility train in the situation, they might face.

Training process shall strive to creation of assistance network from good-mannered friends and partners, who can provide an advice in case new dilemmas appear and can involve colleagues into adoption of fairness practices.

Such softer approaches do not replace regulations and sanctions, but can increase their benefit by helping people to become more self-conscience and capable of making adequate decisions relatively to their behavior, what then can become a background for traditional approaches.

## **1.2 An analysis of the international experience for Conflicts of Interests settlement in the public service**

An analysis of the international experience provides input information for regulation and management of Conflicts of Interests in Estonia, Finland, Latvia, Kyrgyzstan and Georgia. These countries were selected for the comparative analysis due to the following reasons:

1) Estonia, Georgia and Latvia represent post-Soviet Union countries, having common history and heritage from the Soviet period with the Republic of Kazakhstan. At the same time, Georgia represents a country that managed to reach good results in the corruption termination sphere during the last decade.

2) Finland and Estonia represent by themselves good examples of the achievements in the corruption termination sphere in the international level. In the corruption apprehension rating Transparency International, Finland keeps the 3<sup>rd</sup> place (86 points) immediately after New Zealand and Denmark (87 points). Estonia keeps the first place among post-Soviet countries – 18 place (74 points). For comparison, Latvia keeps the 44<sup>th</sup> place (56 points), the Republic of Kyrgyzstan – at the 126<sup>th</sup> place (30 points)/<sup>26</sup>

3) Latvia has another central system for prevention, management and investigation of the corruption, compared to many other countries of the post-Soviet Union, in Lithuania or Ukraine.

4) Kyrgyzstan represents a neighboring country of the Republic of Kazakhstan, that for many years pays attention for the problem with Conflicts of Interests with the assistance of the international organizations.

Table 2

### **Legislative acts, regulating Conflicts of Interests**

<b>Country</b>	<b>Legislation</b>
<u>Estonia</u>	The Constitution (1992)
	The Legislative Act for corruption termination (2012)
	The Legislative Act for public service (2012)
	The good practice for members of Riigikogu. The Legislative Act for the Republic Government (1995)
	The Criminal Code (2002)
	The Status of the member of Riigikogu, the Legislative Act of 2007
<u>Finland</u>	The Constitution (1999)
	The Criminal Code (1889)
	The Regulations for the Parliament members (1999)
<u>Latvia</u>	The Code for the Administrative Offences (1985)
	The Constitution (1922)
	The Criminal Code (1998)
	The Legislative Act for Conflicts of Interests prevention in the public official operations (2002)
	The Legislative Act for the Bureau dealing with corruption prevention and termination (2002)

<sup>26</sup> <https://www.transparency.org/en/cpi/2019/results/>

Georgia	The Constitution (1995)
	The Legislative Act for incompatibility of the interests and corruption in the public service (2017)
	The Legislative Act for public service (2015)
	The Legislative Act for government procurement (2006)
	The Statement of the Government “For setting general regulations of ethics and behavior in the government agencies” (2017)
<u>Kyrgyzstan</u>	The Legislative Act for the government and municipal service No.75 (2016)
	The Code for ethics in the public and municipal service No.43 (2016)
	The Statement of the Government No. 674 “For the Stipulations for control over the compliance of Legislation about civil and municipal service” (2016)
	The Statement No. 288 about public officials ethics (2002) The Legislative Act for corruption termination No. 153 (2012)
	The Legislative Act for Conflicts of Interests (2017)

Generally, the prohibition for Conflicts of Interests is deeply rooted in the main beliefs and structures of the democratic countries. The Constitutions deal with the social interest, but they do not regulate, in details, the Conflicts of Interests.

In Finland and Estonia, there is no special law for Conflicts of Interests. Issues and cases of the Conflicts of Interests are regulated by other means, such as the legislative acts for corruption, administrative legislative acts or the codes of behavior. In Latvia and Kyrgyzstan there are special legislative acts, which indicate the case of the Conflicts of Interests and provide the means for prosecution of such cases.<sup>27</sup> Depending on the legislative system of the country, the specific legislative acts (procedural, institution and others) regulate the Conflicts of Interests.

### **Conflicts of Interests and roles**

While discussing the Conflicts of Interests problem, one of the key questions remains with the roles and types of operations, which are included into the Conflicts of Interests management sphere and regulated by the legislation. Since the Conflicts of Interests are regulated from the viewpoint of protecting public interests from the private, corresponding legislative acts are related at the first place to those, who serves to the public interests – the government public officials. It is widely acknowledged practice to regulate the private Conflicts of Interests and / or corruption in the Criminal Code, but considering the focus of the current analysis, the issue of the Conflicts of Interests and corruption in the private sector gets out of frames.

The question, who are the public officials, is regulated in countries in different ways. For example, in Latvia in the section 4 of the Legislative Act “For Conflicts of Interests prevention in the operations of the government public

<sup>27</sup> [https://www.right2info.org/resources/publications/asset-declarations/latvia\\_law-on-prevention-of-conflict-of-interest-in-activities-of-public-officials/view](https://www.right2info.org/resources/publications/asset-declarations/latvia_law-on-prevention-of-conflict-of-interest-in-activities-of-public-officials/view)

officials”, there is a list with the positions, defined as the governmental public officials, starting with president.

In Estonia, the definition is based on main functions, and not on the list of positions. The legislative act for corruption termination states, that the public position means rights and obligations, coming out from the legislation, transactions or organization of agency work while performing public obligations: 1) making decision, including participation in its making or heading the process. The decision – means making decisions, directed at creation, changing or suspension of rights and obligations of other people, including agencies, performing public obligations, which are regulated by separate cases or unlimited number of cases, including legislative acts, administrative acts in the meaning The Legislative Act for administrative procedure, court rulings and internal legislative documents of the agency. 2) to make an action, including participation in it or to head it in its essence. The action – means the operations, which leads to legal and inevitable actual consequences for other people, including agencies, performing public obligations, and does not represent decision making. The action might also mean execution of any other procedural actions, failure to act or delaying.<sup>28</sup> The functions of government public officials shall be performed in the government enterprises or the local management enterprises, in the government organizations or even in the private organization, if the person performs public obligations.

In accordance with the Legislative Act for public service, there are two categories of public officials: (1) a public person – means a person, that is with the government legal service and is in the trustworthy relationships with the government or with the local government, and (2) an official, working under the labor contract.<sup>29</sup> Depending on their roles and their legitimate status, their operations and Conflicts of Interests management need different regulations.

### **Conflicts of Interests management**

Conflicts of Interests management always represents complex problem for every country and every government administration. There is a questions arising, what tools shall be used and what agencies shall bear the responsibility for the prevention and settlement of Conflicts of Interests.

### **Estonia**

Estonia accepted the Legislative Act for corruption termination as the all-inclusive legislative background for corruption prevention among all the public officials, whether in the government, law enforcement and other government sector spheres. With regard to the public officials, then it is accompanied by the Legislative Act for the public service, which also establishes several standards for fairness and ethics. For example, it enables the use of the behavior regulations and credibility manual, different legislative acts, which as it seems, involve all corresponding issues, with separate practical recommendations for gifts, Conflicts of Interests and auxiliary operations.

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<sup>28</sup> [http://europam.eu/data/mechanisms/COI/COI%20Laws/Estonia/Estonia\\_Anticorruption%20Act\\_2012\\_amended%202016.pdf](http://europam.eu/data/mechanisms/COI/COI%20Laws/Estonia/Estonia_Anticorruption%20Act_2012_amended%202016.pdf)

<sup>29</sup> [http://europam.eu/data/mechanisms/COI/COI%20Laws/Estonia/Estonia\\_Civil%20Service%20Act\\_2012\\_amended%202016.pdf](http://europam.eu/data/mechanisms/COI/COI%20Laws/Estonia/Estonia_Civil%20Service%20Act_2012_amended%202016.pdf)

The credibility guarantee is placed on two poles: (1) disclosure of information, envisaged by the Legislative Act for public information, which puts a wide background for disclosure of the public information: and (2) the Legislative Act for corruption termination (ACA), which establishes the regulations for Conflicts of Interests and procedural limitations, prevention of inappropriate impact of the public officials.<sup>30</sup> ACA is not using Conflicts of Interests definition, but for public officials it is prohibited to make decisions or operate in their official position, and serve to own personal interests and to the interests of any other third parties, and bring unequal or unjustified advantages, contradicting the public interests.

In the Legislative Act for government procurement, “the Conflicts of Interests” mean the situation, when the contractor (power body, public official, representative and etc.) has, directly or indirectly, financial, economic or any personal interest, which can be accepted as endangering their impersonality and independence.

The general ethics code for public officials, made in 2015, is in use specifically for public officials, including those working in the government. This code established the fundamental values, which are expected from all public officials, including impersonality, enabling avoidance of situation, which could bring the seeds of doubts in the impersonality; openness and cooperation, when the public officials shall perform the government power transparently and explicitly clear. Every basic value is accompanied by the clarifications, illustrated with the examples. The ethics code for public officials directly indicates at the necessity, that the public officials shall avoid Conflicts of Interests when performing their obligations.

The Finance Ministry is responsible for training in ethics issue for all public officials and for supporting the operations of the Ethics Committee for public officials’ ethics. The committee for public officials’ ethics shall strive for providing recommendations and discuss the ambivalent cases from the ethics viewpoint, including the cases with participation of the public officials.

The central source of information for corruption and Conflicts of Interests prevention is represented by the special web-site of the Justice Ministry,<sup>31</sup> which keeps the information about current operations and includes different sets of tools, for example, recommendations for Conflicts of Interests prevention, recommendations for interests’ declaration, surveys, statistics, strategy and etc.

The Conflicts of Interests management became subject to each and every separate government organization and depends on the operation area and risks evaluation.

### **Finland**

The Finnish model for government administration and its administrative culture has long historical roots. Actually, the principles of good management, regulating the Conflicts of Interests and the public service, based on the

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<sup>30</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680900551>

<sup>31</sup> <https://www.korruptsioon.ee/ru>

contributions, go back to the period of the Swedish administration and until now represent the inseparable part of the legislative order and of the administrative culture in Finland.<sup>32</sup>

In the Finland legislation there is no definition for Conflicts of Interests. However, there are other limitations, which can look alike with the limitations of incompatibility and limitations for the Conflicts of Interests.

In Finland there is no separate anti-corruption agency or commission. Instead, several agencies (including Justice Ministry, Finance Ministry, Internal Affairs Ministry, General Prosecution Office, Police) participate in the corruption termination. The general responsibility for coordination of attempts, put into corruption termination, is with the Finland Justice Ministry. An Ombudsman highlighted the necessity to create a special division for corruption prevention in the Justice Ministry; at the moment this role is granted to the Department for criminal affairs in the Ministry. This office is responsible for international cooperation (dialogues, reporting, technical support and etc.). In the area of corruption termination, supporting and consulting the national agencies with the issues, related to corruption termination, preventative actions and coordination of the national network for cooperation in the corruption termination.

From the middle of 1990 the Finance Ministry was a responsible agency for ethic issues for different levels of the public administration (including special advisors and chief public officials). The behavior code does not exist as a separate document, but the general principles for the appropriate management are indicated in the Constitution, and also in the Legislative Act for administrative procedures. In 2005 the Finance Ministry issued a manual for government administration, entitled as “The Values in the daily routine operations – the public officials ethics”. The Prime-Minister documentation office bears the responsibility for the ethical issues with regard to the ministers; its consultative role in this area is filled by the Justice Chancellor.<sup>33</sup> The applicable regulations for the disqualification are built-in into the routine day-order for all government public officials.

### **Latvia**

The Latvian system of credibility and corruption prevention is recognized as sufficiently all-inclusive and it includes the Guiding principles for the prevention and termination of corruption in for the years of 2015-2020, the Legislative Act for prevention of Conflicts of Interests in the operations of the public officials and the Criminal Code. The main legislative tool is “The Legislative Act for prevention of Conflicts of Interests in the operations of the government public officials” (LPCOI).<sup>34</sup> Its aim is to ensure, that the actions of the government public officials are in compliance with the social interests, to prevent the impact, coming from the personal of financial interests of the government public official, his family

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<sup>32</sup> <https://vm.fi/documents/10623/306848/Policy+Brief+on+long-term+development+and+future+prospects+of+civil-service+ethics+in+Finland.pdf/5520728b-5a6d-a1e6-85f4-c6193e3d177b/Policy+Brief+on+long-term+development+and+future+prospects+of+civil-service+ethics+in+Finland.pdf>

<sup>33</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680796d12>

<sup>34</sup> <https://likumi.lv/ta/en/en/id/61913-on-prevention-of-conflict-of-interest-in-activities-of-public-officials>



relatives or agents upon his actions, to assist in trustworthy and openness with regard to the public officials' operations and their responsibility in the face of the society. LPCOI establishes the limitations and prohibitions, establishes the regulations for Conflicts of Interests prevention and envisages the declaration of the financial state of the government public officials and mechanisms to investigate them.<sup>35</sup>

In accordance with the legislative act, the Conflicts of Interests represent the situation, when while performing the public duties, the public official shall make a decision or participate in making the decision or shall perform other actions, related to his position, which affect or might affect the personal or financial interest of this government public official, his family members or counter-agents. The Legislative Act provides a detailed review for the Conflicts of Interests situation and instructions, how to act in case of doubting the Conflicts of Interests. The legislative act names the ethical norms, which shall be complied with by the government public officials in addition to the stipulations for the Conflicts of Interests. In the section 22, there are behavior regulations (ethics) for the public officials, and it is stated, that the public officials shall act in accordance with the behavioral (ethical) codes, approved for the relevant professions, area or sector, and that the public official shall refuse from performing public duties or joining the positions of government public officials in all cases, when as per the ethical reasons impersonality and neutrality of his actions might be doubted and questioned.

The Prime-Minister, his deputies, the ministers, the parliament secretaries, the advisors, the consultants and the executives of the prime-minister's documentation division and his deputies, and also the executives of the government agencies and their deputies are qualified as the government public officials and fall under the action of LPCOI, although the scope of applicable prohibitions, limitations and obligations can vary depending on the taken position. In accordance with the Article 11 (1) LPCOI, the government public official while performing his obligations is prohibited "to prepare or issue the administrative acts, to perform supervision, control, interrogation or punishment activities, to make contracts or to perform other actions, where his family members or counter-agents have personal or financial interest".<sup>36</sup>

The major acting party in the operations on corruption termination and Conflicts of Interests prevention is a Bureau for corruption prevention and termination (KNAB)<sup>37</sup> in addition to the Agency for government income, Bureau for protection of constitution and Prime-Minister's documentation office. The Agency for government income publishes and examines (just a small part of 1-2% annually) the declarations for income and property of the public officials, which are then published in the websites.

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<sup>35</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/16808cdc91>

<sup>36</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/16808cdc91>

<sup>37</sup> <https://www.knab.gov.lv/en/knab/>

KNAB<sup>38</sup> controls the observation by the government public officials of the Legislative Act for Conflicts of Interests. KNAB uses declaration as a tool to reveal Conflicts of Interests and examines the legitimacy of the public official actions subject to their compliance with limitations and incompatibility, established by LPCOI. Additionally, the legislative acts, which they have to consider in their works and which regulate some aspects of the Conflicts of Interests problem, include: the Legislative Act for Bureau of corruption prevention and termination; the Legislative Act for political organizations (parties) financing; the Legislative Act for election campaign; the Latvian Code for administrative offences; the Criminal Law, The Legislative Act for investigations activities; the Criminal-procedural law; For prevention of wasting of financial resources and the property of the government and self-governance; the Legislative Act for free information; “For government security information and legislative for government procurement.

Since KNAB performs the functions of prevention, investigation and training, the organizational chart complies with the pre-set tasks. At the same time, the central function of coordination and control brings up the issues of sufficiency. In accordance with the information, received from the executive director of Transparency International in Latvia Liene Gatere, a problem exists with the issue, that the Latvian legislation does not impose directly on some agencies the obligation to examine the declarations. If the Agency for the government income or KNAB reveals discrepancies, then they request to public official to clarify, update information and, if necessary, to perform a thorough investigation. The agency for government income and KNAB publish the information about accepted decisions and sanctions in their web-sites. Usually, administrative sanctions are used, but lately they also include a verbal warning and penalties amounting to 10-350 euro. The criminal law case might get a start based on the Criminal Legislation (the paragraph 219), if the person purposefully provides wrong information about property or income in large amounts.

### **Georgia**

The legislative background of Georgia, regulating the operations of the government agency, includes important stipulations, targeted at assurance of its independence, transparency, due reporting and fairness. However, performance of legislative stipulations, targeted at corruption prevention in the government sphere, shall be addressed as weak. Despite the positive reforms, the system of government procurement saves significant corruption risks.

The Constitution and other legislative acts regulates such issues, as Conflicts of Interests, receiving gifts, declaration of assets and others.

The Legislative Act in Georgia “For incompatibility of the interests and corruption in the public service” is aimed at prevention, revealing and termination of the incompatibility of interests and corruption in the government agencies, it regulates the mechanism for submission of declaration for financial state of public

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<sup>38</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dc53>



official, monitoring of the submitted declarations. The Article 2 includes the subjects of the Legislative Act starting with the President of Georgia that are understood and meant by the term “public official”. The Legislative Act contains many stipulations, ensuring parliament members fairness.<sup>39</sup>

The Legislative Act has limitation measures for a wide range of close family members of the public official: male spouse (female spouse), children and sons-in-law (daughters-in-law), and people, permanently staying with him, family members of the uprising and down falling lines, sisters and brothers, and also sons-in-law (daughters-in-law) of the parents.

The stipulations of the legislative act are also used for judges, by setting the limitations for gifts and entrepreneur operations and requesting from judges to publish their finances and operations.

The legislative act “For public service” regulates the Conflicts of Interests, participation of public officials in the business, limitations for gifts, obligation of the government public officials to disclose their assets and protection of informants. The legislation also includes the stipulations, related to the transfer of employees between the government and private sectors.<sup>40</sup>

In Georgia there are several legislative documents issued for the credibility of the public officials. They are included in the legislative act “For incompatibility of interests and corruption in the public service” and in the statement of the government “For setting the general regulations for ethics and behavior in the government agencies”.<sup>41</sup>

In accordance with these legislative acts, the governmental public officials shall prevent any cases of Conflicts of Interests and report about such cases every time they appear.

The legislative act “For government procurement” includes the stipulation for prevention of Conflicts of Interests, although it does not require anti-corruption stipulations for procurement agreements.<sup>42</sup>

In Georgia, there is a highly transparent electronic system of government procurement implemented. The volume of the uncompetitive procurement within the last years dropped down, but, generally, it remains high. The efficient mechanism is in action to resolve the claims, related to the procurement, but the regulations for Conflicts of Interests are not all-inclusive, and the companies and individuals, tried for the corruption, are not prohibited to participate in the procurement.

However, the Georgian government needs to overcome the problems on ensuring the compliance of legislative stipulations, directed at the Conflicts of Interests and corruption prevention in the governmental level.

The executive power in Georgia in practice is not independent due to informal external impact on its operations. The Government does not perform

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<sup>39</sup> <https://matsne.gov.ge/ru/document/download/33550/55/ru/pdf>

<sup>40</sup> <https://matsne.gov.ge/en/document/download/3031098/1/ru/pdf>

<sup>41</sup> <https://tbilisi.media/main/63250-pravitelstvo-gruzii-prinyalo-postanovlenie-ob-obshhih-pravilah-etiki-i-povedeniya-v-gosudarstvennyh-uchrezhdeniyah/>

<sup>42</sup> <https://matsne.gov.ge/en/document/download/31252/51/en/pdf>

enough attempts to create an independent government service and the corruption termination in the government management. Last years, there were many cases of the expected Conflicts of Interests and corruption in the executive branch of the power, but these cases were not investigated and remained without necessary addressing and regulating them.<sup>43</sup>

The Inter-agency commission for corruption termination (Anti-corruption commission), that was instructed to coordinate an anti-corruption policy in Georgia, shall create an effective system to reveal Conflicts of Interests and to regulate them.

This commission is actively involved into the works together with the representatives of the government institutions' representatives, and also with civil society representatives.

To summarized, in Georgia the legislative base for Conflicts of Interests settlement is sufficiently strong, however the actual application of the legislative acts stipulation in practice is weak.

### **Kyrgyzstan**

In Kyrgyzstan, the purpose of the Legislative Act for Conflicts of Interests<sup>44</sup> was in unification and improvement of the legislation for Conflicts of Interests, implementation of mechanisms for timely revealing, prevention and settlement of the Conflicts of Interests. It also provides practical assistance for the government agencies and their personnel in ensuring the perfection of the official government and administrative decisions in the system of the government administration. The Legislative Act targets the improvement of the Conflicts of Interests resolving institution, reduction of number of situations, when the public officials get into situations, leading to the corruption.

The Legislative Act defines the institutional and legislative background for Conflicts of Interests settlement in the operations of the government and municipal civil officials and the executives of the agencies, organizations and enterprises, operations of which are financed from the governmental and local budgets.

The legislative act for public service describes the main stipulations for the disciplinary proceedings. The disciplinary proceedings shall start, if the government or the municipal official does not comply with the official duties, ethics stipulations or violates the legislative stipulations for Conflicts of Interests. The disciplinary commissions perform disciplinary evaluation; these commissions shall be created in all government and municipal organizations. The commissions shall pass the results of examination and evaluation to the executive of the agency, who will then define the sanction to be applied.

In 2016 the Ethics code was accepted, however the Application for ethics dating back to 2002 was still effective and in use. Both these legislative acts for ethics shall be considered when assessing the ethics and the discipline. The Ethics code and the Application for ethics contain similar and agreeing principles, such

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<sup>43</sup> <https://transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

<sup>44</sup> <https://knews.kg/2017/12/15/prezident-kyrgyzstana-podpisal-soglasovannyj-variant-zakona-o-konflikte-interesov/>

as: assistance with highly professional behavior, prevention of Conflicts of Interests and punishment for corruption.

In accordance with the Legislative Act for corruption termination, the statement of the government No.531 and the statement of the government No.462, every separate government agency shall nominate the position for employee for corruption prevention. In the Statement of the Government No.462, the duties were specified for the employee for corruption prevention; those duties were mainly related to the corruption prevention, raising the transparency and avoidance of Conflicts of Interests situations.

In Kyrgyzstan all the relevant documents are related to the issues of the Conflicts of Interests. The problem might appear from the viewpoint of the control. In every separate organization of the civil and municipal service there are four participants (the disciplinary commission, ethics commission, an employee for corruption prevention and the executives of the organizations), which carry the responsibility for elimination of the law offences and organization. The more participants are in this area, the better the process of Conflicts of Interests prevention.

#### **The conclusions for the Chapter**

In general, the issue of Conflicts of Interests shall be regulated from the legislative and ethical viewpoint. The ways to balance the approaches to complying with the fairness, depend on historical background, traditions and on “what works better”. In the countries with high corruption risks, it is seen clearly that stronger will is more welcomed to support the legislative approach by the relevant punishment mechanisms. Latvia and Kyrgyzstan shall be brought as examples of countries with such approach.

In the countries with lower corruption risks, with well arranged transparency mechanisms and higher level of trust to the government agencies, more attention is given to creation and implementation of the mechanisms of ethics and credibility, to prevent or settle the Conflicts of Interests problem. The examples to be named here are Estonia and Finland.

The implementation of the well-established mechanisms – is a key component in any country. Nevertheless, it is important to provide resources for investigations and training. The mechanisms for control and punishment without operations increasing the awareness will not have long-term effect. The reliability of all actions on prevention and management of Conflicts of Interests is a key component for the achieving the pre-set results.

## CHAPTER 2. DEVELOPMENT OF SYSTEMATIC MEASURES FOR PREVENTION OF THE CONFLICTS OF INTERESTS AND TRUST MANAGEMENT INSTITUTION IMPROVEMENT

### **2.1 An analysis of the legislative backgrounds of the Conflicts of Interests institution settlement and efficiency of the trust management institution application in the Republic of Kazakhstan**

RoK legislation contains main elements of the Conflicts of Interests settlement mechanism in the public service sphere, corresponding in some extent to the international legislative documents.

At the same time, an analysis of the existing legislation in the public service and anti-corruption practice sphere in the RoK proves the necessity of the further improvements in the legislative regulation of the institution of Conflicts of Interests settlement in the sphere of public service, particularly, in its detailing and refining, and in setting actions of public agencies' executives, having the most significant official powers.

A specific attention shall be granted to the differentiation of definitions, given to the notion "Conflicts of Interests" in the public service sphere, pre-set by the existing RoK legislation.

#### **Problem with absence of unified understanding of Conflicts of Interests institution in the legislative level.**

It is necessary to highlight, that a proposal about "improvement of the legislation, regulating Conflicts of Interests prevention", was also indicated in the National report on corruption termination in 2019, submitted to the President of the Country K. Tokayev<sup>45</sup>.

With regard to National report we shall highlight inaccurate, as per our evaluation, application in it of the words combination "Conflicts of Interests prevention" and moreover, "on exclusion of Conflicts of Interests".

At the same time, we shall pay attention to the existing "dispersion" of the indicated word combinations and combinations "on exclusion of Conflicts of Interests", "Conflicts of Interests resolution" in clauses 51 and 15 of the RoK Legislative Act "For public service" and "For corruption termination" correspondingly<sup>46</sup>.

That is, in accordance with the effective legislation and anti-corruption policy, as of today the Conflicts of Interests in the public service sphere shall be "prevented", "eliminated", "settled", "resolved", "excluded", at that, the exact meaning of each and every word combination and coming out of that algorithm for public official and his executive actions remains unclear.

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<sup>45</sup> National report for corruption termination for 2019. [https://www.gov.kz/uploads/2020/5/15/87d57726c33f13a68808fd7977388b46\\_original.2956535.pdf](https://www.gov.kz/uploads/2020/5/15/87d57726c33f13a68808fd7977388b46_original.2956535.pdf).

<sup>46</sup> Republic of Kazakhstan Legislative act dated November 23, 2015 number No. 416-V RoK LA «For public service in the Republic of Kazakhstan». Republic of Kazakhstan Legislative Act dated November 18, 2015 numbered No. 410-V «For corruption termination» (with changes and amendments as of 06.10.2020).

These circumstances might have been omitted and left without deliberate attention, if they did not represent the bright example of the missing unified understanding of the Conflicts of Interests institution essence in the public service at the legislature level. As it is known, the absence of the unified understanding might lead to the inaccurate interpretation and application of the legislature provisions.

And to clarify, in the doctrine level there is no unified viewpoint on the nature and the content of the notion “Conflicts of Interests”.<sup>47</sup>

In practice, as per the evaluation of separate experts, it is actually possible to observe the misunderstanding and underestimation of the Conflicts of Interests in the managerial activities.

In relation to this, we shall review the main purpose of the Conflicts of Interests institution in the public service sphere.

As it is known, Conflicts of Interests institution, independently from the sphere of application, does not represent by himself a negative phenomenon or situation, especially it is not a violation.

In accordance with the RoK Legislative Act “For public service”, the Conflicts of Interests shall be understood as “a contradiction between personal interests of the public official and his official duties, where personal interests of the public official might result in failure to perform or inappropriate performance by him of his official duties”.

This institution, considering its legal and doctrinal definition, specifies not real, but possible, and in some extent, “hypothetical” situations, where potential corruption risks might appear (or might not appear), and also risks of failure to perform or risks of inappropriate performance of the official duties by the public official.

That is, the public official, who got into the situation with Conflicts of Interests, might decide to act in his personal benefits, and not in the public benefits, and vice a versa, exclusively in compliance with his official duties.

In the last case, in spite of presence of interests’ contradiction, there will be no any negative consequences in a form of failure to perform or in a form of the inappropriate performance of his official duties.

For example, the public official is simultaneously a member of accepting committee and is found to be a family relative to the candidate to be hired to this public agency.

A fact of family relation is present; however, the public official does not communicate and does not maintain with him family relations, totally puts himself into remote distance from him, and secretly hopes that the family relative will not be accepted to the prestigious work.

Conflicts of Interests situations can also appear, when a public official, in spite of having an open possibility, will not be able to act in his own personal benefits due to the reason of legally pre-set specific conditions for application of this or that article.

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<sup>47</sup> T.Ya.Habriyeva Corruption: nature, phenomenon, termination: monography / 2012. P. 352.

In such a way, we assume, that the notion “Conflicts of Interests” represents, to some extent, an evaluating category and, in our opinion, shall be interpreted applicably to specific, and not “hypothetical” situation, and more than that, the public officials themselves fail to clarify the situation, when they face the Conflicts of Interests.

Alternatively, as another example, the public official did not know that the candidate is in fact his family member (the father had hid from his family that he had another children).

Taking the above mentioned as a background, it is quite obvious, that the main purpose of the Conflicts of Interests institution in the public service sphere shall be reviewed not as “to allow”, “to eliminate” or “to exclude” it, but so that it is timely revealed, accurately evaluated and there was a regulation implemented for the appeared contradiction between personal and public interests with the aim to ensure the public officials’ performance exclusively in compliance with the specified public duties.

And paraphrased in simple words, the Conflicts of Interests situation shall be settled with the usage of the specified and listed actions in such a way, that the public duties are performed in a duly and proper manner, and the executives of the public agency would have never doubted the fairness and the credibility of the public official.

In the reviewed context, it seems rational to agree with the opinion of those researchers, who claims the “usefulness” of the Conflicts of Interests, because they form an optimal management structure<sup>48</sup>.

That is, with gratitude to the Conflicts of Interests institution it becomes possible, first of all, to assure the fairness of the public official and to reinforce the trust to him in case he beforehand informs about Conflicts of Interests; secondly, it becomes possible to improve the public management system by implementation of changes and additions into the legislative acts when the negative consequences of the Conflicts of Interests appear.

As for the appeared negative consequences of the Conflicts of Interests, revealed in failure to perform or in inappropriate performance of the official duties, it shall not be missed, that the RoK legislation establishes the responsibility of the public official for the specific violation up to his dismissal and / or criminal liability inclusively.

At the same time, the responsibility for performing an action or failure to perform an action in terms of Conflicts of Interests, for failure to perform an action to prevent and to resolve the Conflicts of Interests, for failure to inform about the appeared Conflicts of Interests or about the possibility of its appearance in the RoK Code for Administration Offences or Criminal Code was not envisaged.

The Article 680 of the Code for Administration Offences envisages the responsibility for failure to perform an action by the public agency executive to terminate corruption; however, it is related only to the failure to perform an action

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<sup>48</sup> A.F. Nozdrachev. Conflicts of Interests, origin and definition of the notion.  
[https://studref.com/328085/pravo/konflikt\\_interesov\\_proishozhdenie\\_opredelenie\\_ponyatiya](https://studref.com/328085/pravo/konflikt_interesov_proishozhdenie_opredelenie_ponyatiya)

against the subordinate public officials, found to be guilty in the corruption violation perpetration.

Herewith the RoK Legislative Act “For corruption termination” defines the corruption offence as, the one having the descriptions of the corruption, illegal faulty violation (action or failure to act), for which the legislation indicates the administrative or criminal liability.

Since for performance of actions or failure to perform action in terms of Conflicts of Interests or failure to inform about Conflicts of Interests there is no administrative or criminal liability established, then the Article 480 of CAO will not be put in use in this way.

Additionally to that, we shall highlight that in accordance with the Article 51 of the RoK Legislative Act “For public service”, the public official, his immediate executive and governmental agency executive shall be subject to disciplinary liability in case he fails to perform an action to prevent and settle known to him cases of Conflicts of Interests.

On the other hand, it is clearly rational not to allow and act to prevent the possible offence or violation. In this context, of course, it is necessary to take preventative actions, and also to take termination actions. In such cases, the usage of the word combinations “prevention, elimination, exclusion of Conflicts of Interests” is properly justified.

However, unfortunately, neither RoK Legislative Act “For public service”, nor RoK Legislative Act “For corruption termination” establishes and correspondingly differentiates clear and understandable algorithm for public official actions depending on situation.

This means, what measures (who, at what time, in what scope) shall be taken for prevention of Conflicts of Interests, for settlement, suspension, elimination and etc.

For example, during the auditing examination of the Committee for water resources of the Ministry for ecology, geology, and natural resources of the RoK and RGE “Kazvodhoz” in January 2019, multiple facts of Conflicts of Interests were revealed in the processes of the government procurement.

In particular, in the Eastern-Kazakhstan branch of the RGE “Kazvodhoz” there were 3 contracts made for government procurement for the total amount of the 498.4 million tenge with LLP, the founder of which was found out to be the daughter of this branch’s director.

In Almaty branch of “Kazvodhoz” 2 agreements were made for the government procurement with the company, co-founder of which was the accountant of this branch, and the director was – her spouse.<sup>49</sup>

The indicated violations were revealed not during the targeted planned performance of the activities to reveal the Conflicts of Interests, but within the frames of the external analysis of the corruption risks of the RoK Agency for the corruption termination.

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<sup>49</sup> [https://forbes.kz/news/2019/11/16/newsid\\_212791](https://forbes.kz/news/2019/11/16/newsid_212791)

That way, the law applying practice demonstrates, that revealing the Conflicts of Interests is performed after the negative consequences happen, that shows the absence of the preventative activities to reveal the Conflicts of Interests.

Thus, the Article 51 of the RoK Legislative Act “For public service” obliges the public official, and his immediate executive-in-charge or governmental agency executive-in-charge to take an immediate action to prevent and settle Conflicts of Interests.

The specified actions include:

1) to instruct another public official to perform the public duties of the public official with the issue, due to which the Conflicts of Interests appeared or might appear;

2) to change the public duties of the public official;

3) to take other actions on elimination of Conflicts of Interests.

Within the specified actions, it is not clear, what shall be understood by, first of all, “other actions”. It appears that, based on the article wording and formation, the executive shall “think about them” himself, what already represents the corruption-promoting factor or factor of corruption risk in accordance with the methodic recommendations for performance of scientific anti-corruption expertise of the legislative acts<sup>50</sup>.

Secondly, what of the listed actions shall be classified as actions to “prevent”, and what actions shall be classified as “settling”?

And thirdly, what does it mean “to eliminate the Conflicts of Interests”, if generally speaking the discussion goes around the elimination and settlement of the Conflicts of Interests. Apparently, the elimination and the prevention carries absolutely different meaning and contains different actions algorithms.

Similar situation is in the RoK Legislative Act “For corruption termination”, since the Article 15 of the indicated Legislative Act and Article 51 of the RoK Legislative Act “For public service” are identical and present copies of each other in the content, excluding the differences in the Conflicts of Interests subjects, what will be described in details further on.

As a result, we shall conclude, that the content, of the Article 51 of RoK Legislative Act “For public service” and Article 15 of RoK Legislative Act “For corruption termination”, does not reflect in a required depth the most significant aspects of the Conflicts of Interests institution, brings some misunderstanding into the differentiation of actions to prevent and to settle the Conflicts of Interests, without justification provides independence in selection of “other actions to eliminate Conflicts of Interests”, what brings in itself the corruption risk.

For comparison, we shall demonstrate the experience of Kyrgyzstan Republic, where the Legislative Act of Kyrgyzstan Republic was made on December 12, 2017 and numbered No. 206 (11) “For Conflicts of Interests”, which defines organizational and legislative backgrounds for Conflicts of Interests

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<sup>50</sup> Methodic manual for performance of scientific anti-corruption expertise of the legislative acts drafts, approved by the Order of the Chairperson of the Republic of Kazakhstan Anti-Corruption Agency dated August 19, 2020 numbered No.268.



management in the activities of people, keeping public, municipal and other envisaged by the Legislative Act positions; the Legislative Act is directed at assurance of their activities performance exclusively in public interests, excluding personal (private) interest (involvement) while performing public duties.

In this Legislative Act, the following ranging is made for Conflicts of Interests:

- potential Conflicts of Interests – a situation, when personal interests of people, indicated in the Article 6 of the Legislative Act, at certain conditions can negatively influence upon performance by him of his public duties;

- actual Conflicts of Interests – a situation, when personal (private) interests of people, indicated in the Article 6 of the Legislative Act, directly affect the performance by him of his public duties;

- happened Conflicts of Interests – a situation, when acts or agreements of people, indicated in the Article 6 of the Legislative Act, were accepted or made with presence in them of Conflicts of Interests.

This approach allows developing of the specific activities to reveal, settle and eliminate the Conflicts of Interests, what successfully was reflected in the Legislative Act.

As an example, there is an article 16 “Revealing Conflicts of Interests”, in accordance with which the Conflicts of Interests shall be discovered through the “declaration of personal (private) interests while applying for the position, while taking new position in the public service with other scope of authorities; examination of the presence of family ties with the employer and subordinates when accepting to work people, indicated in the article 6 of this Legislative Act, including when accepting documents of the authorized agencies for participation in voting; revealing the affiliated subjects with officials, indicated in the article 6 of this Legislative act, while performing the government procurement in accordance with the legislation for the government procurement; declaration of the income, expenses, legislation and property of officials, indicated in the article 6 of this Legislative act, in accordance with the legislation for declaration; informing the higher level executives or commission for ethics of the relevant agency about appearing Conflicts of Interests by officials, indicated in the article 6 of this Legislative act; performance of the operations to prevent, reveal, verify, eliminate Conflicts of Interests by agencies and officials, performing the controlling function in accordance with this Legislative act; reviewing and studying the applications and complaints, received by the agency; analysis of publications and messages in the mass media sources<sup>51</sup>.

In the article 17, the specific measures were defined for settlement of the potential Conflicts of Interests.

In particular, “clarification for officials, indicated in the article 6 of this Legislative Act, the legislative acts, regulating activities in situations with Conflicts of Interests; verifications of declaration for personal (private) interests, revealing and analysis of the possible situations with potential Conflicts of

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<sup>51</sup> Kyrgyz Republic Legislative Act dated December 12, 2017 numbered No.206 (11) «For Conflicts of Interests».

Interests and options for their solution, and also clarification of these situations by officials, indicated in the article 6 of this Legislative act; activities, performed by the executives of the officials, indicated in the article 6 of this Legislative act, for elimination of the potential Conflicts of Interests; actions, independently performed by officials, shown in the article 6 of this Legislative act, for elimination of the potential Conflicts of Interests.<sup>52</sup>

The separate article 18 is devoted, actually, to the settlement of the actual Conflicts of Interests.

The ranging, presented above, enables development of explicit and understandable algorithm for the processes of revealing, eliminating and settling Conflicts of Interests.

It should be noted, that this Conflicts of Interests ranging, that was earlier envisaged by Moldova in the legislative act “For declaration of property and personal interests” (art.12)<sup>53</sup>.

Moreover, Moldova, in contrast with post-Soviet countries, keeps stricter position towards position towards the issues of Conflicts of Interests settlement.

This is indicated in the stipulation of the Legislative act (Art.2), in accordance with which the cycle of the Conflicts of Interests includes not only civil officials and members of his family, but common-law husband (common-law wife), with whom the declaration subject lived, while possessing, using or managing without marrying of one or several objects in the previous tax year. In accordance with the legislation, the status of common-law husband / common-law wife shall be granted to people, who lived together in the previous tax year not less than for 183 days.

It should be noted separately, that the RoK Legislative Act “For public service” defines the Conflicts of Interests, in greater degree, for the category of administrative public official. The Legislative Act does not include the provisions, regulating the actions of political public officials, keeping much more affluent powers.

For example, it is not clear, what measures should the political public official take, when he get into the situation with Conflicts of Interests, and who will perform the control.

Additionally, there are not Regulations for relationships to prevent the Conflicts of Interests, related to his business, new and previous work after the political official resigns.

In a similar way to the foreign experience, in such situations the first executive shall report the Conflicts of Interests to the authorized agency for corruption termination. However, in the local legislation such requirement is not included into the documents.

Now therefore, considering the above mentioned it should be noted that there is no systematic approach existing for the Conflicts of Interests settlement for political and administrative public officials.

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<sup>52</sup> Kyrgyz Republic Legislative Act dated December 12, 2017 numbered No.206 (11) «For Conflicts of Interests ».

<sup>53</sup> The Legislative Act No. 133 dated June 17, 2016 г. «For declaration of property and personal interests».  
[http://base.spinform.ru/show\\_doc.fwx?rgn=87568](http://base.spinform.ru/show_doc.fwx?rgn=87568)

Next thing to highlight is the fact, that the RoK Legislative Act “For public service” in its effective contemporary revision does not assist with formation of organizational mechanism for Conflicts of Interests settlement in the public service sphere at all.

In details, there are not regulations made, as strongly as required, for authorities of the commission for ethics; their list of duties shall include, together with other activities, reviewing of all types of messages and applications (complaints) with regard to public officials’ Conflicts of Interests, performance as per the reviewing results of examinations, issuance of the statements for the Conflicts of Interests evaluation and recommendations for Conflicts of Interests settlement, control over execution.

Based on the foregoing and taking into account the best foreign experience, it is proposed **to develop a separate chapter of the Law "On Civil Service"**, dedicated to the conflict of interests, or, by analogy with a number of the previously listed countries, an **Law of the Republic of Kazakhstan "On Conflict of Interest"**.

In the structure of the said chapter or law, it is advisable to provide for the following:

1. The ranging of the Conflicts of Interests on analogy with OECD recommendations (potential, actual, happened Conflicts of Interests);
2. To define and list the actions of the preventative, terminating, regulating nature, coming out from Conflicts of Interests ranging;
3. To establish responsibility and authority limits for the Commission for Ethics in the sphere of Conflicts of Interests settlement, including own will and initiation for requesting necessary information, inviting people, having required information;
4. To define the algorithm for political public official to act for Conflicts of Interests settlement;
5. To define the subjects, responsible for prevention and regulation of Conflicts of Interests;
6. To establish powers for the authorized governmental agency in the public service sphere with reference to the performance of the examination of reliability and integrity of information about income, property and obligations of the pecuniary nature, submitted by the public official, and also by people, trying to get a public service position;
7. To define the procedures for the regular declaration of personal interests;
8. To define the procedures for the participation of the society in the issues of Conflicts of Interests prevention, settling.

Considering the above mentioned, in the Attachment A there is a draft project proposed for implementing changes and amendments into the existing legislation of the RoK.

#### **Competitive Legislative Acts.**

As it was already earlier stated, the effective RoK legislation for the sphere of the public service and management absolutely and unreasonably established

differing from one another definitions for the notion of the “Conflicts of Interests”; this proves the absence of the systematic approach to Conflicts of Interests institution settlement in the legislative level.

And just as a coincidence, the RoK Legislative Act “For corruption termination” dates back to November 18, 2015 and the RoK Legislative Act “For public service” dates back to November 23, 2015, meaning that they were made almost at the same time.

The RoK Legislative Act “For public service” under the Conflicts of Interests understands the “contradiction between personal interests of **the public official** and his official duties, when the personal interests of the public official can lead to failure to perform or to inappropriate performance of his **official duties**”.

The RoK Legislative Act “For corruption termination” under the Conflicts of Interests understands the contradiction between personal interests of people, having major crucial public position, **people, authorized to perform public functions**, people, equal to them, public officials and their public duties, when personal interest of the indicated people can lead to failure to perform and (or) to inappropriate performance by them of their **official duties**.

The RoK Legislative Act “For public property” under the Conflicts of Interests understands the situation, when there is a contradiction appeared between personal interests of the supervisory board member and proper performance by him of his official duties or legitimate interests of individuals and legal entities, government, **capable of leading to causing harm for those legitimate interests**<sup>54</sup>.

In accordance with the Regulations issued for Supervisory Board creation in the governmental enterprises with the right of economic management, the structure of the Supervisory Board includes **the representatives of the authorized agency of the corresponding industry (local executive agency)**, the executive of the legal enterprise with the right of economic management and people, selected on competition base<sup>55</sup>.

As we see, the differences are related:

- to the subjects of the Conflicts of Interests;
- in the word combinations “official duties” and “official obligations”;
- in the cause-and-effect connection with the causing harm and damages.

From our viewpoint, the specified differences in the definitions have significant nature.

With regard to the subjects, we shall note the following. In the RoK Legislative Acts “For public service” and “For public property” only one subject of the Conflicts of Interests is indicated – “the public official” and “the supervisory board member”. In the RoK Legislative Act “For corruption termination”, the number of subjects is much wider.

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<sup>54</sup> Republic of Kazakhstan Legislative Act dated March 1, 2011 No. 413-IV «For government property».

<sup>55</sup> Order of Minister of national economics of the Republic of Kazakhstan dated February 20, 2015 numbered No. 113 «For approval of Regulations for creation of supervisory board in the government enterprises with the right of economic use, requirements, set for the officials, selected to the supervisory board, and the Regulations for competitive selection of supervisory board members and early termination of their authorities».

In particular, this list includes people, keeping important public duty, people, authorized to perform governmental functions, equal to them people, public officials.

It is evident, that “the public official” and “the supervisory board member” are included into that expanded list of subjects.

For illustration purposes, we shall in details list all subjects as per the RoK Legislative Act “For corruption termination”.

In accordance with the Republic of Kazakhstan Criminal Code:

- a person, keeping a major crucial public position, - a person, keeping a position, which is set by the Republic of Kazakhstan Constitution, Constitutional and other Legislative Acts of the Republic of Kazakhstan for the immediate performance of the government functions and obligations of the government agencies, keeping in accordance with the Republic of Kazakhstan Legislation for government service a political public position or **an administrative public position of the “A” corpus;**

- **a person, authorized to perform government functions – the public official** in accordance with the Republic of Kazakhstan legislation for the public service, Maslikhat member;

- a person, equal to people, authorized to perform government functions, - a person, selected to the local management agencies, a civilian, registered as per the specified by the Republic of Kazakhstan Legislation as a potential candidate as Republic of Kazakhstan President, Republic of Kazakhstan Parliament or Maslikhat members, akims of cities with regional value, towns, villages, rural areas, and also as members to the selective agency of the local management; an employee, permanently or temporarily working in the local management agency, whose salary shall be paid from the Republic of Kazakhstan government budget; a person, performing managerial functions in the government agency or subjects of the quasi-public sector, and also a person, authorized to make decisions in the organization or performance of the procurement, including governmental, or responsible for selection and implementation of projects, financed by the means of the Republic of Kazakhstan governmental budget and National Fund, keeping the position not less than the executive of the independent structural division in the specified agencies; employees of the Republic of Kazakhstan National Bank and its agencies; employees of the authorized agency in the civil aviation sphere, acting in accordance with the Republic of Kazakhstan Legislation for the application of the Republic of Kazakhstan airspace and aviation operations; employees of the authorized agency for regulation, control and supervision of the financial market and financial organizations;

- a public official – a person, constantly, temporarily or as per special authorization performing functions of the authority representative or performing organizational-management or administrative-household functions in the governmental agencies, local management agencies, and also in the Republic of Kazakhstan Military Defense Forces, other military and army formations of the Republic of Kazakhstan.

As we can see, the RoK Legislative Act “For corruption termination” in fact includes all subjects of the Conflicts of Interests, representing all kinds of the public service.

This means, that for the public official, in essence, legislatively there are 3 definitions specified for one and the same notion “the Conflicts of Interests” – through the prism of the corruption termination, appropriate execution by him of the public duties, protection of the government legitimate interests.

In this situation, in accordance with the RoK Legislative Act “For legislative acts”, in case there are contradictions in the provisions of the legislative acts of the same level, the provisions of the legislative act with a later date shall be effective.

In other words, the public official shall be guided by the provision of the RoK Legislative Act “For public service”, made on November 23, 2015 (five days later than the RoK Legislative Act “For corruption termination”).

And with regard to the following terms “official duties” and “official obligations”.

In accordance with the Article 1 of the RoK Legislative Act “For public service”, the official duties mean – “the rights and obligations, envisaged for the specific public position, complying with the aims and targets, established for the government agency, where the public officials perform their duties”.

As we can see, from the specified definition it follows, that official duties together with the rights represent official authorities. However, the RoK Legislative Act “For corruption termination” connects the Conflicts of Interests only with obligations of the public official.

Analysis of the best foreign experience demonstrated, that the Conflicts of Interests shall be reviewed, as a rule, through the prism of contradiction of personal interest and obligations, and not the authorities. This approach, as it is indicated in the researches of A.F.Nozdachev, is used by OECD, European Council, Transparency International; due to this, it seems logical and justified, because otherwise it should be accepted, that in accordance with the logics of the RoK Legislative Act “For public service”, there is the possibility of contradiction between the personal interest of the public official and delegated to him rights.

And with regard to the cause-and-effect connection with the causing harm.

As it was noted, the RoK Legislative Act “For governmental property” under the Conflicts of Interests understands a situation, when there is a contradiction appeared between the personal motivation of the supervisory board member and appropriate execution by him of his **official duties** or legitimate interests of individuals and legal entities, government, **capable of causing harm to those legitimate interests**.

As we see, first of all, again the term “official duties” is used, and not the obligations, secondly, as opposed to the RoK Legislative Acts “For public service” and “For corruption termination”, the cause-and-effect connection is indicated between the personal motivation and capability of causing harm for the governmental legitimate interests.

In such a way, the RoK Legislation established three definitions, given for one and the same notion “the Conflicts of Interests” in the public service sphere,

characterized in greater degree by particular agency interests – through the prism of the corruption termination, proper performance of official duties, protection of the legitimate property interests of the government.

### **Personal interest.**

RoK legislation does not contain an explicit definition of the “personal interest”, despite the fact, that this notion shall be classified as a basic element of all the Conflicts of Interests structure. In the local legislative science, there is no clear-cut explanation for the personal interest.

In the foreign literature, it is highlighted that the personal interest of the public official includes any advantages (benefits) for himself (herself), for his family, parents, friends or relatives, for people or organizations, with whom he or she has or had business or political relationships. The personal interest also includes any financial or civil obligation, which this public official has to execute.<sup>56</sup>

For example, in the Law of the Republic of Moldova "On declaration of property and personal interests", personal interest is understood as any interest, material or intangible, of the subject of declaration, arising from his activities as a private person, from relations with close persons or with legal entities, regardless of the type property, relations or connections with non-profit organizations, including political parties, with international organizations, as well as any interest arising from his preferences or obligations.<sup>57</sup>

These definitions cover a fairly wide range of personal interests, thereby contributing to the effective identification of conflicts of interest.

As already noted with reference to the experience of Kyrgyzstan and Moldova, the identification of a conflict of interest is carried out through the declaration of personal interests when entering the public service.

In accordance with the Law of the Republic of Kazakhstan "On Combating Corruption", the persons specified in this Law submit declarations of individuals, in particular, a declaration of assets and liabilities and a declaration of income and property.

The declaration of assets and liabilities is represented by:

1) candidates for the President of the Republic of Kazakhstan, deputies of the Parliament of the Republic of Kazakhstan and maslikhats, akims of cities of district significance, settlements, villages, rural districts, as well as members of elected bodies of local self-government and their spouses - prior to registration as a candidate;

2) persons who are candidates for a public office or a position related to the performance of public or equivalent functions, and their spouses, with the exception of the persons specified in subparagraph 1) of this paragraph, - before the issuance of an act of an official (body) having the right appointments to a

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<sup>56</sup> A.F. Nozdrachev. Conflicts of Interests, origin and definition of the notion. [https://studref.com/328085/pravo/konflikt\\_interesov\\_proishozhdenie\\_opredelenie\\_ponyatiya](https://studref.com/328085/pravo/konflikt_interesov_proishozhdenie_opredelenie_ponyatiya).

<sup>57</sup> Закон Республики Молдова от 17 июня 2016 года № 133 «О декларировании имущества и личных интересов»

position, about an appointment to a position (as of the first day of the month of submission of the declaration).

3. Declaration of income and property is submitted by:

1) persons holding a responsible public office and their spouses;

2) persons authorized to perform state functions and their spouses;

3) officials and their spouses;

4) persons equated to persons authorized to perform state functions and their spouses.

As we can see, the declaration of assets and liabilities, income and property, in contrast to the declaration of personal interests, significantly narrows the possibility of identifying a conflict of interest, since, among other things, communication with non-profit organizations, including political parties, with international organizations, etc., falls out of the "orbit" .d.

In this regard, we believe it expedient, firstly, to develop the concept of "personal interest", and secondly, to provide legislatively the obligation to declare personal interest.

Based on the above stated, with the aim to bring to unified international standards and single understanding, it is necessary to make changes into the revision of the Article 51 of the RoK legislative act "For public service" by reciting the following definition of the Conflicts of Interests in the following revision:

*«The Conflicts of Interests – means the contradiction between personal interests of the public official and his official duties, when the personal interests of the public official might lead to failure to perform or inappropriate performance by him of his official duties».*

### **Analysis made for the efficiency of the trust management's institution application**

The RoK Legislation actually envisages the trust management's institutions for the public official's property and the trust management for the governmental property.

Those specified institutions together with other functions perform the role of a tool, enabling Conflicts of Interests prevention.

At the same time, the analysis of the legislative background proves the presence of such a called legislative loops and abilities of the public official to pass by the prohibitions and within the frames of the institutions still provide an impact on own property management. Let us have a review for the trust management's institutions for the public official's property and separately the trust management for the governmental property.

### **Trust management's institution for the public official's property**

In accordance with the Article 13 of the RoK Legislative Act "For public service", the public official shall, during the time he is involved in public service sphere, hand-over into the trust management his possessions in a form shares, stock (stocks) in the registered capital of the commercial organizations and other property, the usage of which leads to getting income, except money, legitimately belonging to that person, and also the real property, handed over to property lease.



This process is formed as an agreement and after notarized legalization shall be submitted by the public official within ten days to the human resources department in the work place.

The official procedure for the hand-over of the public officials' property to the trust management is regulated by the Regulations for the public officials' property hand-over to the trust management, approved by the Statement of the Republic of Kazakhstan Government dated December 30, 2015 and numbered No.1126.

An analysis of the indicated Regulations allows making a conclusion that, Conflicts of Interests settlement, in its essence, is limited by reporting the property hand-over to the trust management within ten days to the human resources department in the work place.

A mechanism for further monitoring over the property's trust management from the authorized agency or person is missing currently. The entrusted manager does not fall into the Conflicts of Interests sphere, and it is prohibited to establish in certain specified cases business relationships with governmental agencies and so on and so forth.

As an example, a simple examination of the entrusted manager (who received the property) will enable evaluation of his ability to self-dependently and independently manage the property of the public official (there is a chance that the entrusted manager has a criminal record for foul play or he never spent a single day in the private sphere and etc.) and will enable understanding that the public official in this situation will not follow his personal interest.

Such circumstances in no way assist in prevention of the Conflicts of Interests appearing with the public officials, who handed over their property to the trusted management.

For comparison purpose, we shall provide an example from the European Union Board for the Conflicts of Interests management in the public service.

In accordance with the Guidance manual, transfer of enterprise management rights to the entrusted manager represents one of the obligations of the highly ranked public official, possessing shares or part of enterprise capital, when performing governmental functions.

The public official does not have a right to represent business, to propose information, instructions, orders or have an impact, maintain connection with the entrusted person in such a way, that he influences upon him.

In case if the entrusted person or a family relative of the public official establishes some sort of business relationships with the governing agencies, with governmental enterprises or with enterprises, where the governmental property share exceeds 5%, shall obligatorily inform the public official about those business connections.

The enterprises, which are managed by the entrusted manager or a family relative of the public official, do not have rights to make agreements or to get assistance from the central or local enterprises of the public official. The entrusted manager shall have an ability to implement his rights independently.

In details, the entrusted manager shall not be the spouse, children, a person with social dependence from the public official.

We find it helpful to envisage such requirements in the agreement, made for the property in trust management.

Herewith in the same context, we shall review the main content of the property's trust management institution. This will help to differentiate the specific provisions, requiring attention from the viewpoint of improving the efficiency of the trust management's institution in the context of the Conflicts of Interests avoidance in the public service sphere.

The property's trust management institution is in details described in the Republic of Kazakhstan Civil Code (Special Part)<sup>58</sup>.

The RoK Civil Code Chapter 44 is completely devoted to the property's trust management.

In accordance with Article 883 of the Republic of Kazakhstan Civil Code, when founding a trust management for property, the entrusted manager shall perform on behalf of his name the management of the property, transferred for his possession, application and control, if other terms are not envisaged in the agreement or legislative acts, to the benefits of the beneficiary party.

The trust management of property, together with others, appears (is founded) based on the administrative act, including the situation, when the entrepreneur gets a position in the public service.

In accordance with the Article 886 of the Republic of Kazakhstan Civil Code, as per the agreement made for trust management of the property, one party (the founder of the trust management) transfers to another party (the entrusted manager) his property for trust management; and the other party shall perform management of this property to the benefits of the person (the beneficiary), indicated by the founder.

With regard to the public official himself, the Republic of Kazakhstan Civil Code envisages the trust management for the property of the public official (the Article 895 of the Republic of Kazakhstan Civil Code), in accordance with which "the property of the public official, used for entrepreneur operations, shall be transferred to the trust management in cases and in the order, envisaged by the legislative acts".

Those constant references of the Republic of Kazakhstan Civil Code to the other acts and procedures, and the absence of the requirements for the entrusted manager for Conflicts of Interests prevention, and for the interaction with the governmental agencies and organizations in reality have no significant impact on Conflicts of Interests prevention and carry a potential risks for Conflicts of Interests appearing.

For comparison, we shall review the experience of Canada, where the "blind trust" institution is in use.

The indicated institution does not represent the analogy for the property's trust management as we understand it, however, it has separate elements included,

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<sup>58</sup> Civil Code of the Republic of Kazakhstan (Special part) dated July 1, 1999 numbered No. 409.

which in a root vary from our local analogues and have an impact on Conflicts of Interests prevention.

Firstly, it should be noted, that in Canada the property management is transferred not to relatives or someone else, but to the special company.<sup>59</sup>

Secondly, the company represented by the entrusted manager in no way has a right to request, directly or indirectly, about any pieces of advice, instructions or directives from the founder (the public official) with reference to the entrusted property or management, controlling or investing of it; and the company shall not act based on some pieces of advice or instructions, which might be given by the founder or someone else on behalf of him.

In relation to this, herewith it makes sense to process, with the concerned governmental agencies, and then to initiate the review for the opportunities to implement “the blind trust” institution in cases of the Conflicts of Interests of the public official.

In such a way, as per the results of the analysis above, made for the trust management institution for the public official property, we propose the following measures.

Below listed requirements shall be envisaged in the agreement, made for the trust management of the public officials’ property:

- the Conflicts of Interests of the entrusted manager;
- submission of information to authorized agency, dealing with public service, on the corresponding requests;
- informing the public official about establishing business relationships with the governmental agencies, organizations and the enterprises;
- prohibition for public official to advertise and present his / her property, transferred to the trust management.

### **Trust management of the government property**

To begin with, we will consider the most successful foreign models of state property management, which will allow us to compare the existing institutions for trust management of state property through the prism of a conflict of interest.

In the United States, public property includes buildings (55.3%), structures and equipment (36.7%), and land (8%). State-owned enterprises are managed by special departments created by the decision of the US Congress.

The literature notes that a feature of the American model of public sector management is the transfer of state-owned enterprises to operational management and operation by private corporations, while the state, as the owner of the enterprise, takes care of the sale of its products and provides the corresponding orders.<sup>60</sup>

It should be noted that privatization in the United States involves not only the sale of state-owned enterprises, but also the introduction of market mechanisms such as contracting government agencies with private firms as executors of orders,

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<sup>59</sup> <http://www.ethicscommissioner.ab.ca/media/1254/2014-blind-trust-agreement.pdf>

<sup>60</sup> <http://ej.kubagro.ru/2009/05/pdf/09.pdf>

introducing paid government services instead of free ones, and extending responsibility for certain conditions of society's life to private institutions.

In the UK, government properties, including land, tend to be placed under the jurisdiction of trusts. At the same time, a trust is understood as "an obligation voluntarily assumed by the manager, whom the law forces to possess and manage property in good faith in the interests of another person or persons (beneficiary), with the inadmissibility of any risk in relation to this property"<sup>61</sup>. In Germany, state property management is carried out by the Berlin Office for State Property Management with an extensive network of 15 branches.

Note that the practice of transferring state assets to a trust is most developed in Western Europe, Canada, Japan, Australia, Slovakia, India, South Korea, Latin America and Africa.

In Belarus, management of state property is based on the Concept of State Property Management, developed back in 2001, aimed at increasing the efficiency of the use of state property.

It should be noted that Belarus has defined criteria for classifying buildings, structures and non-residential premises as ineffectively used.

According to Belarusian experts, part of the state property, due to its quantity, cannot be effectively used, and therefore a decision was made to optimize the number of state enterprises.<sup>62</sup>

Belarus remains a major holder of state shares, owning stakes in 601 joint-stock companies and exercising representation on the board of directors, in 320 of which the state's stake is over 75%.

In Kazakhstan, trust management of state property dates back to the 90s of the last century. According to some authors, at the early stage of privatization in Kazakhstan, trust management of state property was used as a mechanism for attracting investment and paying off debts of state-owned enterprises.<sup>63</sup>

According to the same estimates, in fact, the transfer of state property to trust was used for privatization.

Since 2016, the country has seen a decline in the number of state-owned enterprises. At the end of July 2019, the number of such enterprises was 24.6 thousand, which is 1.5% less than in the same period in 2018.<sup>64</sup>

Today in Kazakhstan there are 4660 state-owned enterprises, 461 with state participation in the authorized capital, about 40% of which are used inefficiently.<sup>65</sup>

*Reference: in the regional context, Almaty region is the leader in the number of state-owned companies - 2.24 thousand, or 9.1% of the total number in the*

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<sup>61</sup> <http://ej.kubagro.ru/2009/05/pdf/09.pdf>

<sup>62</sup> Мельников О.В., Жерносек Н.К. О реализации концепции управления государственным имуществом республики Беларусь // Управление собственностью. №3. 2004.

<sup>63</sup> Доверительное управление государственной собственностью как эффективная модель государственно-частного партнерства в Казахстане. Матаев Т.М.

<sup>64</sup> <https://kursiv.kz/news/kompanii/2019-09/gosudarstvennykh-predpriyatii-v-kazahstane-standovitsya-vse-menshe>

<sup>65</sup> Пирматов Г. О. Наша задача - повысить эффективность управления госактивами, Информационное агентство "Интерфакс-Казахстан". 2008 <http://www.minplan.kz>

*country. The Turkestan region is in second place with 2.23 thousand state enterprises (9% of the total). The East Kazakhstan region is in third place - 2.18 thousand enterprises. Also, the top five by the number of such companies included Akmola and Karaganda regions - 1.92 thousand and 1.91 thousand, respectively.*

According to the same estimates, the government's policy in this area is aimed at optimizing the composition of state property by converting part of it into joint stock companies or limited liability partnerships and transferring part of state shares to the authorized capital of state holdings and corporations. More and more corporations and national holdings appear in Kazakhstan.

Regarding the conflict of interest, it should be noted that the relations arising in the trust management of state property are ambiguous in terms of its prevention and settlement, carry potential corruption risks, since they are associated with the use of significant budget funds.

For example, in the city of Petropavlovsk, the Akimat identified three state kindergartens, which were in an unsatisfactory state, for transfer to trust management and attracting investments. At the same time, according to public assessments, these kindergartens were in good condition, in connection with which, after a series of indignations from the public, it was decided to cancel the transfer of three kindergartens in Petropavlovsk to trust.

Subsequently, it was revealed that the founder of one of the enterprises to which the kindergarten was to be transferred was the common-law spouse of the head of the city education department. Monitoring of open sources of information allows us to conclude that there is a conflict of interest in the transfer of state property to trust.

This also indicates the absence of a preventive mechanism for identifying conflicts of interest in the trust management of state property.

It should be noted, that the relationships, appearing during the trust management of the government property, have very complicated nature from the viewpoint of preventing and settling the Conflicts of Interests, and also they carry potential corruption risks, since they are related to usage of the significant budget means.

The peculiarities of the trust management of the government property are enlisted, as opposed to the trust management of the public official's property, not in the Republic of Kazakhstan Civil Code, but in the Legislative Acts of the Republic of Kazakhstan, released for the government property, for the government-private partnership, for concessions and some other legislative acts of the Republic of Kazakhstan.

The Republic of Kazakhstan Legislative Act "For the government property" had defined that the subject matter of the agreement to-be-made for the trust management of the government property shall be represented by the property complexes of the government enterprises, real estate property, money, belonging to the government<sup>66</sup>.

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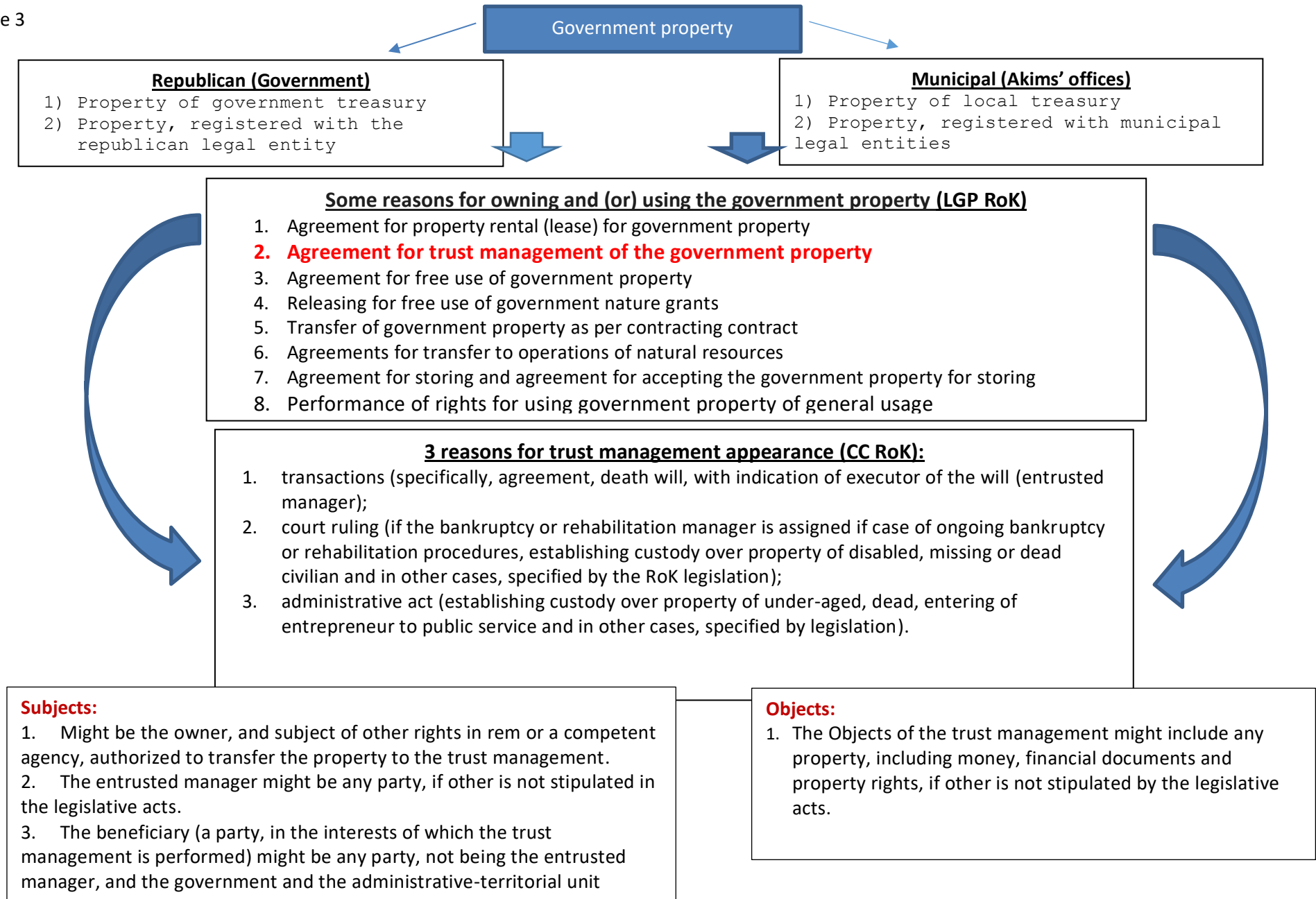
<sup>66</sup> Republic of Kazakhstan Legislative Act dated March 1, 2011 No. 413-IV «For government property» (with changes and amendments dated 15.11.2020).

In accordance with the Republic of Kazakhstan Legislative Act “For government property”, the government property might be classified as republican and as a municipal.

The republican property shall be transferred to the trust management by the authorized agency for government property management (the founder of the trust management for the republican property).

Municipal property shall be transferred to the trust management by the founder of the trusted management for the municipal property, correspondingly the local executive agency or as per approval of the board of the local community – an office of the akim of the town with district value, village, settlement, rural area (Figure 3).

Figure 3



The transfer of the government property to the trust management shall be performed in accordance with the Regulations for government property transfer to trust management<sup>67</sup>.

The regulations envisage the procedure for the trust management transfers, the procedure for preparation of facility for transfer to trust management, the procedure for preparation to arrange bidding processes, bidding documentation, the procedure for bidding implementation, the procedure for bidding outputs formation and agreement content, the requisition for participation in the bidding process for government property transfer, and the template of the requisition for participation in the tender for transfers to the trust management.

The specified Regulations include as well a typical proforma contract for the trust management of the government property.

An analysis of the specified Regulations confirms the absence of the procedure for compensation of expenses, related to the trust management of the property, belonging to the government property list, and the compensation to be paid to the entrusted manager.

Additionally, the Conflicts of Interests issues were not specified, which might appear between the founders' board interests and the entrusted manager, and also the requirements for the bidding participants.

Just as an example, the bidding participants might be having criminal records related to the foul play, theft or might be affiliated with the subjects of the authorized agency.

The Conflicts of Interests when making, executing and suspending the agreements for the trust management can also appear both between the trust management founder and the entrusted manager and between their employees when performing the trust management operations.

In relation to this, it makes a sense to implement into the reviewed Regulations the changes, particularly, to fill the typical proforma agreement for the trust management with the article about **the Conflicts of Interests**.

The indicated clause shall also contain the following requirements.

1. The entrusted manager shall be headed by the effective legislation and ensure the prevention of the Conflicts of Interests, and also shall act in the interests and to the benefits of the trust management founder, the beneficiary in accordance with the trust management agreement.

2. The entrusted manager shall perform the operations with the property, transferred to his trust management, based on market values and shall avoid actions, which might lead to Conflicts of Interests appearing.

3. The employees of the entrusted manager with the aim to prevent the Conflicts of Interests appearing shall when making the operations with the trust management avoid:

- participation in the transactions, where other subjects have some personal connections or financial interests with that public official or his family member;

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<sup>67</sup> Order of Minister of national economics of the Republic of Kazakhstan dated January 16, 2015 numbered No. 17 «For approval of Regulations for transfer of government property to trust management and Typical agreement for trust management of the government property».



- transfer of internal information about the transactions with the third parties, and also usage of the internal information for making transactions.

4. The entrusted manager shall duly perform development and shall ensure control over compliance of employees with the regulations set forth for the limitation in relation to the exchanging office and confidential information. This is necessary to prevent Conflicts of Interests appearing between its different functional departments.

To execute this requirement, the entrusted manager shall use the following measures:

- the non-disclosure of the confidential information (written obligation of the employees);

- the functional and process separation of the corresponding departments (information security and protection of computer network in the departments, performing trust management operations and etc.);

- the segregated subordination of the corresponding functional departments of the entrusted manager;

- the territorial isolation of the employees and documents, related to the trust management operations.

Such changes will involve all the concerned people and parties to the orbit of Conflicts of Interests institution implementation.

As it was stated above, the relationships, appearing during the trust management of the government property, are accompanied by the potential corruption risks.

In relation to this, it will be useful to define, where exactly they can show themselves and appear.

In the reviewed context, the attention is grabbed by the function of municipal property release to the trust management to the individuals and non-government legal entities with the right of (or without right of) sequential purchasing.

This function shall be performed in compliance with the Republic of Kazakhstan Civil Code, the Republic of Kazakhstan Legislative Act “For government property” and also with Regulations for government property transfer to the trust management.

In accordance with the clause 2 of the Article 888 of the Republic of Kazakhstan Civil Code, the clause 8 of the Article 75 of the Legislative Act, the entrusted manager shall have the right to compensation of the required expenses, he carried while performing trust management for the government property, as per the procedures, specified by the Republic of Kazakhstan budgeting legislation and the Agreement for trust management of the government property, for compensation, if these is envisaged in the Republic of Kazakhstan Legislative Acts or in the agreement made for trust management of the government property.

With regard to the references and clarifications we shall note down, that this practice is still present now. For example, similarly to the premises rental we shall demonstrate the results of the government audit made for efficiency of the

management established for cultural and sports facilities, municipal property, transferred to the trust management of the “SPK “Astana” JSC.

It was revealed, that “as a violation of the regulations by the operator, advertisements were not published for accepting requisitions to release to property rental of commercial premises in the Astana city Akim’s internet-resource, and the information about performed measures on releasing the commercial premises was not forwarded to the Entrepreneurs Chamber to be published in the web-site”<sup>68</sup>.

According to the sub-clause 1) of the clause 33 of the Regulations, an English method for auctions execution shall be regulated in the following way – an auctioneer shall announce the initial value of the facility and the value-increasing lag.

By raising the auction number, the auction participants increase the initial value, with limitations set by the value-increasing lag. The indicated measures are not natural for auction implementation in electronic form. Those loops in the legislation represents the corruption risks in reality.

**The agreement for the property rental (lease).** The attentional shall be drawn to the terms of the agreement for the property rental to be made for the government property. The object of the property rental in the case of the government property might be both mobile and immobile property (belongings).

The republican property shall be transferred to the property rental (lease) by the authorized agency for government property management (lessor (leasing holder of the republican property), excluding the physical-health-caring and sports structures in the government organizations for the secondary education.

The municipal property shall be transferred to property rental (lease) by the local executive agency or as per the approval with the local society committee, akims’ offices in the towns with district value, village, inhabited settlement, rural area (lessor (leasing holder) of the municipal property), excluding the physical-health-caring and sports structures in the government organizations for the secondary education.

The transfer of the government property into the property rental (lease) shall be performed as per the procedure, defined by the central authorized agency for government planning.

Judging by available facts, this area of legal relationships is missing a mechanism to prevent the Conflicts of Interests.

As a confirmation, the results of the examination, performed by the existing at that time Agency for public service and corruption termination and by the Republic of Kazakhstan Finance Ministry for the government agencies premises, revealed the presence of 163 thousand of square meters of inefficiently used premises space.

As per the evaluation of the indicated Agency, the idle spaces might be released for usage by other governmental agencies, renting spaces from entrepreneurs. Based on made calculations, as a result of irrational non-usage of the premises, the budget made unjustified losses for their maintenance. As an

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<sup>68</sup> <http://rkastana.gov.kz/source/uploadsf>

example, within 3 years, and annually, the premises space rented from entrepreneurs for the purpose of placing akims' offices employees increased from 45 thousand square meters in 2016 to 52.9 thousand square meters in 2018.

Another fact is demonstrated too, when Pavlodar region Department for land relations, having exceeding occupied premises in the amount of 353 square meters, had rented the space of 287.8 square meters from the governmental corporation "Government for Public" with annual payment amounting to 2.7 million tenge.

General statistics looks this way, in 2018 the government released to 735 entrepreneurs for rental 29 thousand of square meters of akims' offices premises and received 178 million tenge of income. At the same time, the rental by 142 government agencies of 52 thousand of square meters consumed more than 1.8 billion tenge.

There were facts revealed, when in one and the same inhabited area, akims' offices rented premises, and released their premises for rentals to other entrepreneurs.

Almaty region Tekeli Department for land relations rented from an Individual Entrepreneur an office with 49.8 square meters area for 1.2 million tenge per year, however Tekeli Department for internal policies releases for rent an exceeding space of 62.8 square meters to the branch of "Atameken" NCC with the annual payment of 726 thousand tenge.

It is highlighted, that the agencies also practiced rentals from private people of premises with obviously exceeding spaces, with the annual spending from the budget means<sup>69</sup>.

In the mass media sources, with the reference to the website of the government procurement it is stated, that the Social Medical Insurance Fund rented starting in January 2020 from "Nursaya Deluxe" LLP the office premises with parking space with 68 million tenge value per three months. In the end of June 2020, the rental agreement was extended for half a year; the total value became equal to 117.2 million tenge<sup>70</sup>.

The leaseholder (tenant) of the government property might be represented by the individuals and non-governmental legal entities, if another is not envisaged in the legislative acts of the Republic of Kazakhstan.

The right to use the government property might in some cases be transferred as the input into the registered capital of the legal entities with participation of the government.

The terms of the agreement for property rental (lease) for the government property shall be defined by the typical proforma agreement, to be approved with the authorized agency for the government planning, with consideration of the limitations, defined by this Legislative Act.

In such a way, the above stated points at absence of the transparency of accounting and inventorying the useful space, efficiency of the public property

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<sup>69</sup> [https://tengrinews.kz/kazakhstan\\_news/gosorganyi-zanimayut-163-tyisyachi-lishnih-kvadratnyih-360423/](https://tengrinews.kz/kazakhstan_news/gosorganyi-zanimayut-163-tyisyachi-lishnih-kvadratnyih-360423/)

<sup>70</sup> <https://neonomad.kz/sotni-millionov-na-arendu-ofisa-kartiny-i-zamenu-tehniki-tratit-fond-medstrahovaniya/>

application, procedure for Conflicts of Interests definition between the concerned parties.

Additionally, there is no single operator for monitoring, evaluation of efficiency and improvement of the procedure for application of republican and municipal property.

We admit that it is feasible to create the open interactive map with premises and government property, released for the trust management, containing the results of the inventory examination and other property objects of the government, including the public private partnership, privatizing, rental agreement, and also declaration of the personal interests of the transaction participants.

Summarizing the experience of the previously listed countries, it is also necessary to highlight the need to develop scientific and methodological foundations of trust management.

In particular, it is necessary to carry out the development of a national policy in the field of trust management of state property, its legislative consolidation.

You should also develop an information system in the field of property management, which must be accessible and contain accurate and up-to-date information. For example, in the United States, all reporting information on business entities is regularly published.

The right balance must be struck between the role of leadership and ownership. It is necessary to separate ownership of property from its management, which makes it possible to develop outsourcing and public-private partnerships.

## **2.2 Conflicts of Interests settlement in the public service: opinion of the expert community**

### **1. Description of the research methods**

Within the frames of this research, interviewing of the specialists was performed; the specialists had knowledge, professional experience, competence in the Conflicts of Interests prevention and settlement sphere.

With the aim to obtain deeper and wider information, and to open the specific nuances of the studied subject matter, the interviewed specialists were represented by the specialists from the public sector, professionally involved into the corruption termination and Conflicts of Interests, by the representatives of the public organizations and academic society, studying this problem for a long period of time, and also by the ombudsmen for ethics in the central and local executive agencies, competent in the issues of conflict checkups.

The survey included 14 experts. The main criteria for experts' selection for this interview was their competency, acknowledgement by their social society and the knowledge of the specific parts of the studied subject matter.

Table 3

**Distribution of experts in various categories**

<b>№</b>	<b>Groups of operations sphere</b>	<b>Person</b>
1	Pubic officials	4

2	Society representatives	3
3	Representatives of the scientific society	3
4	Ombudsman for ethics	4

To perform the experts' interview, we created a list of questions (guide), which were distributed among them to reveal the viewpoints of the experts with regard to the Conflicts of Interests settlement problems in the public service of the country, and to define the effective measures to improve this institution. The interviews were handled in the written form, meaning that questions were sent to experts to their mails, that action enabled them to thoroughly get prepared for the answers and even to collect necessary materials.

In general, the interview questions might be subdivided conditionally into three conceptual blocks.

**The first block** – revealing the personal experience of the expert and evaluation Conflicts of Interests cases appearance in the public service. Here in this block there are three questions:

1. As per your opinion, what type of the Conflicts of Interests represents the most corruption-related in the public service in the Republic of Kazakhstan, to be prevented in the first place (Conflicts of Interests, related to solving the cadaster issues, government property managed, performance of government procurement, acceptance of gifts and receiving services and etc.)? Why?

2. How do you think, what agencies of the authority, governmental and quazi-governmental organizations are more affected by the corruption risks, related to the Conflicts of Interests? Why?

3. What kinds of Conflicts of Interests did you face with in your professional activities? What kind of help was useful for you when settling the Conflicts of Interests (legislative requirements, centralized coordination, trainings, consultations and etc.)?

**The second block** – discussion of the legislative backgrounds of the Conflicts of Interests settlement institution in the Republic of Kazakhstan and the international experience of Conflicts of Interests checkups and settlement in the public service and the evaluation of its application in the Republic of Kazakhstan. This block includes two questions:

4. How do you think, how efficient are the existing legislative stipulations for checkups, revealing and settlement of the Conflicts of Interests in the Republic of Kazakhstan public service? What are the main loops in the administrative and court-related practices?

5. What international experience on Conflicts of Interests checkup, revealing and settlement, in your opinion, could prove effective with consideration of existing behavior standards in the Republic of Kazakhstan public administration?

**Third block** – revealing the proposals and recommendations for Conflicts of Interests settlement institute in the Republic of Kazakhstan. His block has three questions:

6. Can you recommend any actions or an action plan to improve the Conflicts of Interests settlement institution in the Republic of Kazakhstan public service?

7. How do you think, what shall be done to make public officials interested in the prevention and settlement of the situations, related to the Conflicts of Interests?

8. How do you think, are the currently existing standards effective in Conflicts of Interests prevention in the public service when performing trust management and rental of offices by government and quazi-government agencies? Do you know the practices, when public officials, were holders of the assets, and made decisions in that sphere? Is there a problem in assuring the transparency when placing the government agencies into the private buildings? What measures can you propose to checkup the Conflicts of Interests when solving such issues?

Generally, the method of experts' interviewing allowed performing of comprehensive, complete and complex analysis of the Conflicts of Interests problem as a corruption-related factor and revealing the possible mechanisms and measures to checkup and settle them.

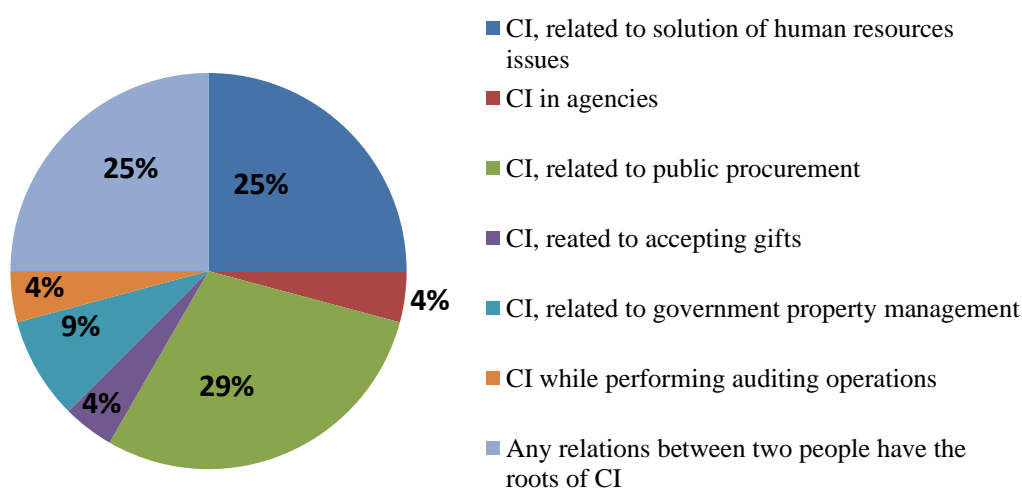
## 2. The results of the research: the reasons, the conditions of Conflicts of Interests appearing in the public service, and the actions to prevent them

### 2.1 Types of Conflicts of Interests in the public service in the Republic of Kazakhstan

The opinion of experts about the typical situations of the Conflicts of Interests showed general coincidences in some terms.

Figure 3

**Question:** What type of competing interests in the public service of the Republic of Kazakhstan, in Your opinion, is the most corruptive, and shall be prevented in first place?



Almost all experts stated, the Conflicts of Interests more often would certainly happen at the process of government procurement and human resource issues resolving.

In the first case, there is a tremendous risk that the preference while performing the public procurement will be given to the certain vendors (family members, friends, acquaintances) due to the personal compassion of the public officials. In accordance with the opinion of one expert *“Government procurement – means the sphere, where implementation is with the managerial decisions, related to the budget means. Automation of those processes, the special attention from the managing agencies resulted in sharpened criminal methods of operation. This is the source of the Conflicts of Interests, it exists in this sphere, and it becomes more latent. To trace the Conflicts of Interests and the compassion is more complicated in here”*. The experts proposed to develop special instructions for disclosure of “cartel transactions”, “culprit benevolence”, “money laundering”, “unjustified increase or lowering of the prices”, “sharpening of the procurement for one vendor or unreal terms: deadlines, terms of procurement, features of the services and goods” and etc. Interestingly, these instructions shall be available for the wide range of the people, without limiting it to the work of trained specialists, if necessary.

In the first case, the high possibility of Conflicts of Interests appearance in the process of solving the human resources issues is related to the fact, that there is a risk of accepting to work of incompetent workers, based on family relations, territorial relations or grouped transfer. The main reason, in the opinion of some experts, shall be as a deficit of the qualified human resources in the country, what resulted in the critical need of many executives for the human resources with high competence *“...considering the limitation of this resource, many executives form more or less qualified team of human resources around themselves. However, considering that many executives change the sphere of the operations in a drastic manner, then in future the qualification of separate employees is leveled down”*.

The third most widely spread corruption-related type of the Conflicts of Interests, considering the experts’ responses – is management of the government property. It is related to higher risks for the basics of the government administration, including financial, material and reputation losses. The fourth place in the corruption-related types is with the Conflicts of Interests, related to accepting the gifts and free services from people, with regard to whom the official duties are used, and also the Conflicts of Interests while performing examination activities in the government agency system itself. Partially, those risks the experts relate to low salary level of people, who make such decisions, absence of the due control from the supervisory officials, because their salary is even less compared to those, who they check.

An interesting situation happens in the agencies Conflicts of Interests. One of the interviewed highlighted, that compared to other typical situations – this type is more common and widely spread, however, the most harmful corruption-related and more damaging to the government and the society. The expert explains his position in the following case: *“As an example, The Finance Ministry is the developer, operator and the control agency in the sphere of the government procurement. This leads to reduction of the efficiency in the work of all involved structures, operating in the sphere of the government procurement, hereby the possibility of corruption phenomenon increases. As another example, we can talk about the operations of the quazi-government sector in the entrepreneurship sphere. Thus, “Kazakhtelecom” JSC being the largest of the ICT services*

*operator makes agreements to buy the operators of the mobile communication (Tele2, Kcell), by that it fixes its domineering position in the ICT market. At the same time, the anti-monopolistic agency does not see in such agreements any violations. I believe, that agencies' Conflicts of Interests, in this case demonstrated themselves in their wider understanding: anti-monopolistic government agency does not find the monopolization from the side of the quazi-company".*

In many cases, the interviewed specialists pointed at the fact, that all types of the Conflicts of Interests include the corruption-related factors. At that, the level and the time-limits for making of the relevant decision on Conflicts of Interests management shall be defined after the studying the possibility level for Conflicts of Interests tolerance, levels of the corruption risk (high, average, low), the possibility of committing disciplinary offence and /or corruption offence, possible potential and actual consequences for certain spheres of business operations.

It should be noted, that in practice all the named above situations with the Conflicts of Interests happened often enough. Additionally, in many cases, we observe the mixture of several types of Conflicts of Interests, and we face more often the practice of using Conflicts of Interests for coverage of the corruption schemes.

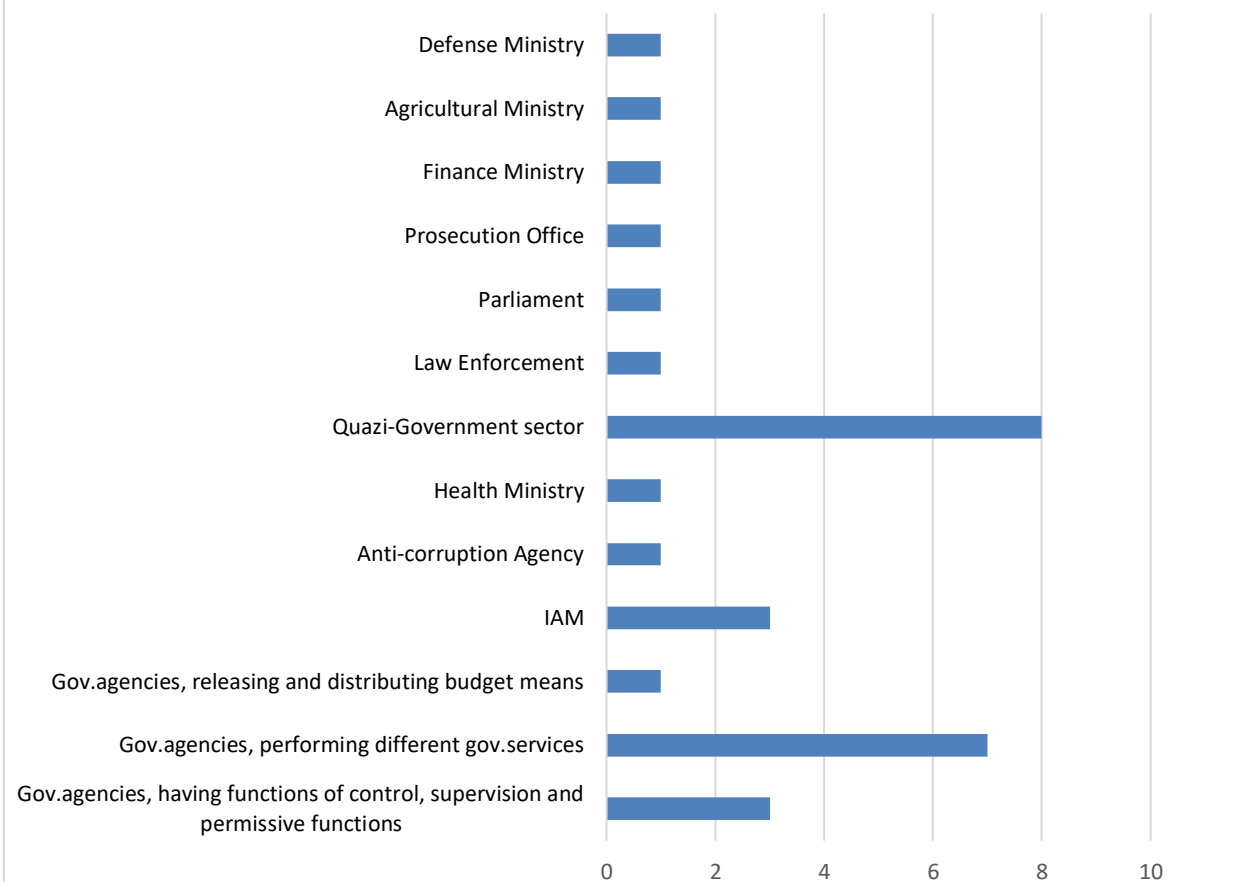
## ***2.2 Government agencies, government and quazi-government organizations more affected for corruption risks***

To the question “*How do you think, what government agencies, government and quazi-government organizations are more affected by the corruption risks, related to the Conflicts of Interests and why?*” most of the experts responded that higher corruption risks are present in all government agencies and subject of the quazi-government agency, where effective Conflicts of Interests management system was not implemented.

Figure 4



**Question:** How do you think, what public agencies, government and quazi-government organizations are at higher corruption risks, related to competing interests and why?



At the same time, among the government sector the higher risks and impacts go to the organizations, having more functions to control and to supervise, functions to issue permissions, having larger volumes of government procurement, performed without bidding procedures, having access to information, classified as the government secrets and / or commercial secrets, releasing and distributing budget means (subsidies, grants, government special orders and etc.).

In the quazi-government sector, the risks level grow if there are no detailed regulations for tasks and functions, official duties, limitations, procedures for making decisions by separate public officials, and also when there is no effective system of control, responsibility and it is not assured with openness and transparency of the operations.

The other issue is that until now in the quazi-government sector, in the legislative level only the executives were assumed the subjects of the corruption offences. Now in accordance with the new revisions in the anti-corruption legislation, their number increased up to the managers of the structural divisions, having controlling and ordering functions. In accordance with the opinion of the experts, this will provide a push for more active operations to avoid Conflicts of Interests in this sector.

The experts advise to form a register of position, more affected by the corruption, and also relate to them their special legislative status, including their special limitations and the salary payment system: “*this includes, first of all, the public officials, having controlling, supervising functions, or those, who bears the responsibility for the government procurement, government services and etc. However, these are the internal descriptions, proving the corruption risks, related to the Conflicts of Interests. The number of the external features include such questions as, doing business by the close family members; close family relatives working in the controlled or reporting government agencies, or organizations; presence of the agreement on business transfer to the trust management and others*”.

### ***2.3 Personal experience of the experts, facing the cases with Conflicts of Interests***

The last question from the first block of questions was about the personal experience of the experts, facing the cases with Conflicts of Interests in the professional operations.

Table 3

**Question.** What kinds of Conflicts of Interests did you face in your professional operations? What help was useful for you while Conflicts of Interests settlement?

<b>No of expert</b>	<b>Conflicts of Interests, faced by the experts</b>	<b>Useful assistance at its settlement</b>
1	Teamed transfers, joined work of spouses in the same industry.	Changing the duties of the participants of this situation.
2	Conflicts of Interests when distributing bonuses, evaluation of work, provision of vacation or execution of order.	The legislative requirements, trainings and consultations, irregular, permanent, with the program for personnel growth, psychological help, many unable to evaluate consciously and adequately their responsibility, revealing and selection when accepting for managerial positions.
3	Formation of teams in the public service based on close blood and family connections.	The legislative requirements in the public service, in Kazakhstan they are less popular, the attention is more with the traditions, which are “stronger” than legislation.
4	Conflicts of Interests, related to issues of performing government procurement and distribution of grants.	Centralization of all government procurement in one agency, which will perform all government procurement, and legislative requirement about dismissal from position for allowing Conflicts of Interests (if no criminal complications are present).
5	Protection while applying for public service, distribution of government orders, distribution of land sections.	Such things as legislation requirements, possible consequences at the strict audit by the controlling government agencies have assisted.
6	Participation in the government procurement, procurement in the subjects of quazi-government sector of the close family relatives, other parties, having with public	While analyzing and settling the indicated situations to use in the background the requirements, specified by the Republic of Kazakhstan legislative acts.

	official (employee) personal relations; with execution by public official (employee) of government and equaled to them functions with reference to the family members, close relatives and / or other parties, with whom the public official (employee) has personal interests.	
7	Conducting entrepreneur operations by the relatives of the public official in the controlled sphere	To enforce the legislative requirements, trainings and consultations on Conflicts of Interests settlement

Four of the 14 interviewed experts did not face in their professional operations the cases with the Conflicts of Interests.

More often the cases with Conflicts of Interests in the practice were faced by the experts in the situations, related to the getting jobs, participation in the procurement (including quazi-governmental sector), joined work with people with family ties, distribution of bonuses, land sections and etc.

In particular, from the viewpoint of one of the experts, Conflicts of Interests when distributing bonuses, evaluating the work and releasing for vacation, he faced in his professional operations, mainly appeared on the background of “...*inability to control own emotions, breaking the subordination, position “the manager is always right: or “I am a director, I decide for everyone”, higher ego, or presence of psychological complexes, inability to communicate in a constructive way with each other, to hear”*”.

As per the opinion of the second expert, every situation needs separate investigation. For example, “... *if the employee, working in the public service, arranges government orders, government procurement and etc., is a spouse of the person, participating those government procurement, then this situation is not always conditioned with the issue of the Conflicts of Interests. In such situations, it is necessary to investigate all aspects in details, to investigate Conflicts of Interests impact: profit, possible impact on final decision and etc”*”.

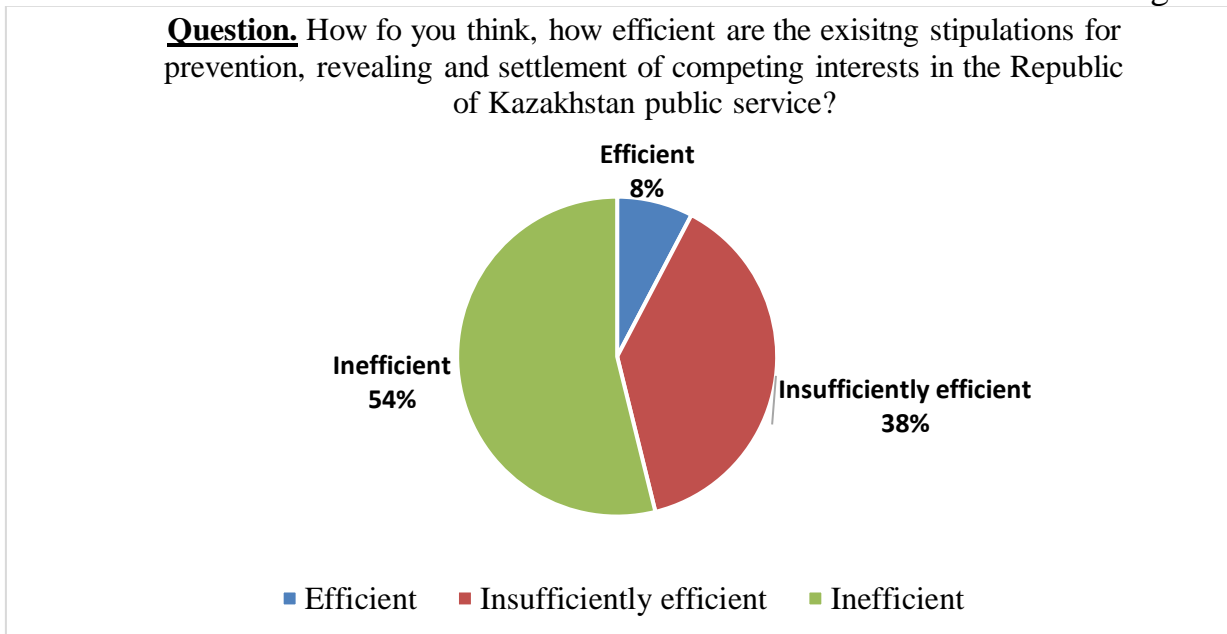
The response of another expert was that the important condition for efficient prevention of Conflicts of Interests cases is the open access to different information: “*The legislation for personal information blocks the work on revealing the Conflicts of Interests, because often it is related to the information about third parties. Additionally, in my opinion, it is necessary to revise and correct such notions, as “tax secrets”, “bank secrets”, “commercial secrets” or internal information of the internal government audit service, revising commissions for the results of the performed audits and etc. An access to such information is for law enforcement within the specific criminal cases. This means that the information is available and is provided, when the crime is committed”*”.

In general, major part of experts highlighted, that the situation of Conflicts of Interests has a moral in-built part, because it mostly depends on the level of moral culture of the public officials (employees), from the legislative consciousness, ability to accept legislative and legally accurate decisions.

***Efficiency of the effecting stipulations for Conflicts of Interests management in the public service and the main loops in the administrative and court-ruled practices?***

The major part of the experts (92%) thinks, that the existing stipulations of the legislation does not allow in a due way to regulate the issues of the Conflicts of Interests and only one expert stated, that the stipulations for checkups, revealing and settling and Conflicts of Interests in the public service are not efficient, with consideration of the established behavior stipulations for the government officials.

Figure 5



Almost all experts pointed at the main loop being the unclear notion of the “Conflicts of Interests”, envisaged in the legislative act “For public service in the RoK” and the legislative act “For corruption termination”.

For example, “... the notion Conflicts of Interests – means the contradiction between personal interests of officials, ... when personal interests might lead to failure to perform and (or) inappropriate performance of own official duties. However, such description of this situation goes beyond the limits of traditional understanding of Conflicts of Interests (for example, an official, willing to correct the mistake made in the system aiming at avoiding the disciplinary responsibility, makes changes in the non-sanctioned order, what in accordance with the existing definition shall be acknowledged as the Conflicts of Interests)”.

The significant loop is the lack of requirement for the strict and constant monitoring and revealing of the Conflicts of Interests, missing government agency, responsible for the systematic revealing of the Conflicts of Interests, missing legislative limitations an even definition of the notion “teamed transfers” and etc.

Table 4

**The Major loops in the Legislation**

No. of Expert	Responses
1	The main loop is represented by vague notion “Conflicts of Interests”, given in the legislative acts “For public service in the RoK” and “For corruption termination”.

2	Lawful loops in the definitions system, in refusal from commercial profit (transfer of trust management), measures for Conflicts of Interests settlement and etc.
3	In the legislative level, there are no requirements for strict and permanent monitoring and revealing the Conflicts of Interests.
4	Applied, in many cases, disciplinary liability cannot be measured and equaled with received advantages (material and immaterial), due to allowing Conflicts of Interests.
5	As the practice shows, Conflicts of Interests might happen between former colleagues, co-workers, classmates, groupmates and friends. However, there are no legislative limitations and even definitions for notion “teamed transfers”. There are not detailed regulations in the legislation on how to report Conflicts of Interests and take measures to exclude such conflicts.
6	There is not government agency, responsible for systematic revealing of Conflicts of Interests, revealing such conflicts is not regular and reminds more the imitation of such work. There is no explicit methodology for revealing Conflicts of Interests and obligatory regulations.
7	Different legislative acts give different picture of understanding and evaluating the Conflicts of Interests. Different interpretation of one term leads, as a result, to its different reading.
8	Legislation loops and imperfection of stipulations, related to the definitions system, and functions and authorities of all subjects, participating in the processes of Conflicts of Interests management, loops in the part of fixing the Conflicts of Interests management principles, loops in the part of the regulating stages in the Conflicts of Interests management.
9	In the legislation, there are no explicit tools to reveal, react on and responsibility for the Conflicts of Interests. There is only vague general notion.
10	For performing an action or failure to act in terms of Conflicts of Interests or failure to inform about Conflicts of Interests, administrative or criminal liability is not envisaged.

The daily practice and the results of this sociological survey confirms the inaccuracy of the Republic of Kazakhstan legislation, related to the Conflicts of Interests management. For example, in accordance with the experts’ opinion:

– *«At the moment all the stipulations, related to the Conflicts of Interests, are directed to the one, who has the Conflicts of Interests, he has to announce it and regulate it. That is, everything is as per the will and considering self-consciousness and moral qualities of the public official, that is the reason why the Conflicts of Interests revealed in reality are at the very low level. Public officials are not in a hurry to announce them, at the legislative level there are not requirement for strict and permanent monitoring and disclosing the Conflicts of Interests ».*

– *“The existing legislation does not contain the requirement, that the public official shall announce the presence of the Conflicts of Interests, and the executive shall take measure to avoid such conflicts. This may happen at government procurement, government services, during investigations and etc. However, such detailed regimes of how the process should go on in this or in that cases, are not included into the legislation”.*

– *The discussion is still with the task to re-adjust the mechanism for neutralizing sources, reasons, conditions and consequences of Conflicts of Interests. At first, in the part of defining the cycle of officials, who are obliged to provide information about income, expenses,*

*property and property obligations, accuracy of such information and ways of using it: monitoring risks of Conflicts of Interests appearance: connection to the system informing about possible or present Conflicts of Interests of the political parties, profession unions, non-governmental non-commercial organizations, other public organizations.*

In the opinion of the experts it is necessary to clarify the status and authorities of the ombudsman for ethics, “...having a wide list of functions of 12 points, it possesses the unlimited authorities. Mechanisms for monitoring and control over observation of official ethics clearly are not described in the legislation. As a result, the ombudsmen for ethics interpret and understand their functions in different ways, depending on personal experience, competences and knowledge. The ombudsmen for ethics cannot review the responsibility of the public officials, committing violation of the work-related ethics stipulations. He has to address the above-levelled public officials with a proposal to review the responsibility of the unethical public officials. If the ethical offence was committed by the above-levelled public officials, then the ombudsmen for ethics might get into quite unpleasant position”.

Generally, many experts agree in the opinion, that the problem of Conflicts of Interests settlement in many ways shall be defined not only by the irregularities of the legislation, but with the weak practice of its application in the agencies due to the different reasons. As a rule this leads to reduction of the quality of the official duties’ performance and endangers the values of the public service institution, what damages the organizational, legislative and moral backgrounds of the government.

### ***2.5 Measures to improve the Conflicts of Interests settlement institution in the Republic of Kazakhstan public service***

One of the questions of the interview was devoted to the revealing of the perspective tools and mechanisms to terminate Conflicts of Interests in the Republic of Kazakhstan public service.

The experts could not form single and unified opinion with regard to the measures to improve the Conflicts of Interests institution. The specialists named at least 20 different measures, and interestingly but only opinions of 2 experts coincided. These measures are as follows:

1) Definition of a list of officials, who will have rights to qualify the Conflicts of Interests. For example, employees in the ASCA, employees of the ACC, prosecution officer, and ion places (in the government agencies) – the ombudsmen for ethics.

2) Increasing the transparency of the decisions, made by the public officials in all the level, changing the culture of the government administration.

3) Definition of the spheres (procurement, human resources, development and acceptance of the legislative acts) as main and additional / accompanying. Development of explicit instructions and mechanisms / tools on, how to act, when the Conflicts of Interests appear depending on the sphere, what legislative acts are effective for cases and what is the responsibility envisaged.

4) Introduction of a new mechanism to control the Conflicts of Interests situation appearance – declaration of the public officials’ interests. Such practice is spread in the OECD countries, particularly in Canada, where the public official declares all his interests (when applying for a job and provides such information

when additional interests appear). There they declare different information (the company of close family members, commercial obligations and etc).

5) In the legislative act “For public service”, it is necessary to devote a separate chapter for the details and clarity of the procedure of willing Conflicts of Interests disclosure, and specifically the procedure of the permanent monitoring and active disclosure of the potential and actual Conflicts of Interests, and also definition of the specific structure, responsible for this.

6) Enforcing the disciplinary and administrative responsibility for public officials for failure to take measures to Conflicts of Interests settlement.

7) Organization of uninterrupted training of public officials in issues of Conflicts of Interests.

8) On a legislative bases to input the stipulation for dismissal from the duties and position for the conflict appearance, interests lobbying (in case of absence of criminal composition), that is to envisage only two kinds of responsibility – criminal responsibility and dismissal.

9) Operations on revealing and eliminating the Conflicts of Interests shall be taken by the ombudsmen for ethics. However, the statute for this status and operations, typical questionnaire, which they can be guided by, do not contain detailed regulations, what they have to do in that course.

10) Fixing responsibility for creation of Conflicts of Interests pre-conditions and fixing the responsible government agency for the reporting of such Conflicts of Interests, fixing the authorities of the society for revealing the Conflicts of Interests within the frames of the legislative act “For public control”, obligatory legislative fixing of the declaration of Conflicts of Interests in the public service (based on the example of the legislative act for JSC). .

11) To force a separate government agency to examine the declaration information to check its compliance with the reality. .

12) To detail the cycle of subjects with Conflicts of Interests. More often, the Conflicts of Interests is related to close family members, but there are other connections – colleagues, neighbors, classmates, friends, friends of friends and others. If there is not cycle of subjects defined, then there will be no explicit understanding of this phenomenon.

13) Improving the conceptual definitions, fixing the principles for Conflicts of Interests management, and also functions and authorities of all subject, participating in the Conflicts of Interests management processes.

14) Additionally to develop a package with relevant methodic recommendations for the government agencies and subjects of the quazi-government sector.

15) Within the frames of performance of internal and external analysis of the corruption risks, it is recommended to enforce the experts analysis of the course – “Presence of the Conflicts of Interests”.

16) The statutes for the Conflicts of Interests shall be fixed in all the levels of internal acts of governmental agencies and subjects of the quazi-governmental sector, related to the issues and procedures for making decisions, including the

issues of forming commissions, solving human resources issues, making decisions for the procurement issues and etc.

17) Further development of the system of administrative and work-related regulations.

18) Improving procedures for the obligatory notification about Conflicts of Interests.

19) Inviting public society institutions to organization of execution and monitoring of the stipulations implementation for the Conflicts of Interests settlement.

20) Clarification of definition for the notion “personal interests” with consideration of the non-material, non-property involvement. Definition of the procedure for declaration of the personal interests of such a kind. Establishing the principles for the beforehand definition of what kinds of the personal interests are incompatible with decision-making to the benefits of the public interests.

To summarize, the major part of the experts indicates that it is necessary to shift from prohibiting policies of the government and Conflicts of Interests settlement to its prevention and checkup.

## ***2.6 International experience in prevention, revealing and settling of the Conflicts of Interests***

To the question about the international experience on prevention, revealing and settling the Conflicts of Interests, which might have become effective with consideration of the settled behavior norms in the system of the government administration in the Republic of Kazakhstan, many experts pointed at the experience of the OECD countries.

In particular, the most interesting and useful for Kazakhstan is American experience, where the so-called commissioners for ethics exist, who are not controlled by any services and independent from making decisions. The Conflicts of Interests in the USA draws serious attention. For example, in the American legislation the processes are detailed for the Conflicts of Interests with clarifications, there are prohibitions for public officials to have earning aside (there are exceptions, like scientific, teaching and art-related works), that often represent the hidden gift or a bribe for the public official.

As per the opinion of some experts, the most interesting for review is the mechanism of overall declaration, and also the institution of the unjustified wealth accumulation, effective in the OECD countries and countries-participants of GSC: *"The overall transparency of the income and expenses, multiplied with the obligation to prove of the owner of the legitimate source of this or that property. In other words, the evidential burden is not with the law enforcement, but with the official, possessing doubtful property and resources (if the expenses and property levels do not coincide with the income level). If this official fails to prove the legitimacy of its source, then it is equal to the corruption offence"*.

As it is proved above, the received responses of experts, the following international practices allow minimizing the Conflicts of Interests likelihood of the occurrence and significantly lower the chances of using administrative resource with damaging aims:



- the experience of keeping a register of factors, potentially able to create the Conflicts of Interests (the Czech Republic);
- the practice of office relations regulation using special administrative regulations for prevention of “improper connection of personal financial interests and execution of the official duties” (France, the Great Britain);
- accepting special legislative acts for the transparency of the government administration and increase of efficiency of the information-analytical formation of the office relations (Australia, Ireland, Spain, Finland, France);
- formation in the society of the atmosphere of “absolute intolerance” to the bribes (Denmark, Finland, Singapore, Sweden);
- the experience of hierarchical constructed system of committees and commissions for party’s control in terms of the socialistic system of the governmental administration, their role in ensuring the government discipline, combating with bureaucracy and damaging usage of official position (China, Cuba).

One of the experts indicated that to accept in a clean form the experience of this or that country, with consideration of the specifics of the national legislation of the RoK, the peculiarities of the mentality and legislative culture, will be quite complicated. In relation to this, he recommends orienting on the provisions and requirements of the international acts and agreements, somehow or another, related to this sphere of relations, and also on the positive experience of separate countries, with consideration of the local peculiarities. In details, among the acts these are UN Convention against corruption, International Code of behavior for government public officials. As the most qualified and efficient anti-corruption means and tools to prevent and eliminate the Conflicts of Interests he recommends the following: declaring personal and family property; declaring personal interests, related to the contracts administration; declaring personal interests, related to the process of decision-making or voting.

### ***2.7 Raising the interest of the public officials in prevention and settling of the situations, related to the Conflicts of Interests***

The most important pre-conditions and conditions, able to impact upon increasing the interests of the public officials in taking measures to prevent and settle the Conflicts of Interests, as per the opinion of many experts, shall be:

*1) increasing the salary level, introduction of strict sanctions for failure to prevent and failure to settle the situations, related to the Conflicts of Interests;*

*2) openness, knowledge of own rights, absence of the fear to be dismissed, punished, for coming out with the reporting and facing with such situation, psychological preparation and training;*

*3) accepting of a separate legislative act for protection of the informants, where all methods and tools will be listed in the written form to protect the information about those officials, financial stimulation and public acknowledgement are also envisaged;*

*4) increasing the transparency and openness of the public officials operations, and also of officials, working in the quazi-government companies*

*(openness of applications reviewing processes and decision-making, publishing tax declarations, possibility to evaluate their professional operations and etc.). In terms of control from civilians, the public officials and employees of the quazi-government sector will be interested (forced) to prevent and settle the situations, related to the Conflicts of Interests;*

*5) to actively perform the process of ethics implementation for public service through the ombudsmen for ethics, who shall be authorized not with the formal rights as it is now, but with the actually actual authorities on ethics investigation implementation, removing from operations of ethics offenders, application of penalties and etc.*

*6) positive effect in motivation issues of openness and honest work of public officials might be introduced by the independent mass-media (it is necessary to release the legislation in that direction).*

*7) family limitations in terms of rights for the possessing private companies; declaration and registration of the personal interests;*

*8) compatibility and mutual augmentability of criminal and administrative punishments for actions / failure to act with regard to the actual and potential Conflicts of Interests;*

*9) development of institutions for civil society and public control mechanisms, free mass-media and strong court power.*

In line with that, the experts often focused the attention on the fact, that in many cases, the violations in the Conflicts of Interests sphere take place due to lack of knowledge, and due to this connection, in addition to implementation of the legislative initiatives, it is important to clarify for the public officials of content and consequences of the Conflicts of Interests in the public service. As one of the experts stated: *“In the public service there are obvious ethics violations – presence in the office in intoxicated state, using abusive words and others. The person, who committed this, cannot say, that he did not know about the limitations. And there are such ethics violations, where it is necessary to think hundred times, to analyze and then to inform in written form. Their number include the Conflicts of Interests. For example, an official, participating as a member of any commission, use “inertia, automation” and despite the Conflicts of Interests, starts voting. The case might be, that their vote does not mean too much. The winning company had fair and objective advantages, many commission members gave their votes to it, but all this cannot represent a strong argument. Thus the public service needs detailed clarification, based on different cases”*.

An interesting viewpoint is given by another expert, who stated, that motivation to prevent and settle Conflicts of Interests, first of all, related to achieving of such called psychological comfort, which provides for the public official of a possibility to calmly perform his functions, without violating the established stipulations. The psychological comfort is often related to the subjective comprehension of the situation not only by the public official, but of his cycle as well (family relative, friends), thus it is important, as per the opinion of the expert, to perform informational and educational work in large audience.

Such a complex approach to solving this issue is proposed by another expert, who classified all the proposed recommendations as *judicial, institutional, organizations, informational-psychological and material-financial means*.

Table 5

Judicial (Legitimate)	Improving the existing legislation of the RoK, and development of the methodic and other materials for correct practical application of legislation requirements;
	Acceptance of internal legislative acts, regulating the procedures and requirement for Conflicts of Interests management;
	Performance of monitoring for legislative acts subject to presence of corruptive factors;
	Execution of internal (external) analysis of the corruption risks;
	Creation of the legitimate mechanisms, stimulating compliance with prohibitions and limitations, requirements, obligations of public officials (employees);
	Improving duties descriptions for public officials (employees);
	Exclusion of contradictions between administrative regulations, duties instructions from one side and by planned indicators form the other side;
	Assurance of protection of public officials (employees) in cases of assigning wrong orders;
	Assuring application of responsibility limits with regard to the public official (employees) for non-compliance with the prohibitions, limitations and failure to perform requirements and obligations;
	Institutional means
Organizational means	Setting appropriate control over the operations of public officials (employees);
	Planning operations for assuring compliance with prohibitions, limitations, requirements, liabilities of the public officials (employees);
	Effective organization of administrative accounting and control, by means of fixing relevant authorities with the responsible deputy of the executive;
Informative- psychological means	Provision for public officials (employees) with reliable information about tie legitimate status and possible cases of Conflicts of Interests ;
	Introducing public officials (employees) with their duties on prevention and settlement of Conflicts of Interests ;
	Forming the atmosphere of risk reality of bearing responsibility for failure to perform duties on prevention and settlement of Conflicts of Interests ;
	Assuring transparency in operations of public officials (organizations);
	Revealing and excluding the conditions for the de-rooting in the command of accepting behavior towards Conflicts of Interests while performing by public officials (employees) of their duties;
	Revealing and excluding the conditions for stereotyped behavior of public officials (employees) based on false values;
Material-financial means	Raising the salary level and social protection of public officials (employees);
	Financial stimulation for complying with prohibitions, limitations and

	liabilities;
	Financing scientific development, sociologic researches for the issues of assuring the compliance with prohibitions, limitations and;
	Assurance of openness and disclosure of the decision making system for the premium issues and setting the increments;
	Excluding the preferences when stimulating public officials (employees);
	Assurance of moral and materials resources for public official (employee) motivation.

## ***2.8 Conflicts of Interests in the public service when performing the trust management and offices renting***

In their professional operations, the major part of experts never faced those issues, however, they assume that there is a possibility of high corruption risks, related to the lobbying interests when performing trust management and offices renting by government and quazi-government agencies.

As an example, one of the experts, fixes the attention on that, the effective legislation for assets transfer to the trust management are of declarative nature, *“the person, who receives the assets, as a rule, is affiliated, additionally, in this aspect of the questions there is no control”*. In the opinion of the expert to close the loops in this issue, it is necessary to improve the existing institutions: transfer of assets of public officials to the “blind trust”, declaration of interests, performing control (compliance service) and etc.

In responses of other experts, there are more pessimistic evaluations with regard to the institution of the trust management:

– *«Efficiency of the currently existing legislation in the specified sphere of the legal relations as the practice shows, and the results of performed researches prove, is not high. The main reason is lack of transparency and openness in the operations of such organizations, and also absence of the efficient system for prevention and revealing such facts».*

– *«The trust management institution was criticized multiple times. The main issue is that, if the person as per the agreement transferred the enterprise to third party management, does this exclude his interests in future? Unconditionally no. However, the humankind in these cases has not created something better, than the trust management. Most probably, the response should sound this way. Because a person, transferring business, gets a notary (and because he cannot do it with a back date) and then submits that agreement to the human resources. In such a way, the executive of the government agency, at least, gets a chance to consider and prevent the Conflicts of Interests».*

– *«...operates only occasionally. In cases of land sections distribution, then members of the land commission releases sections for themselves. While distributing the government apartments and bonuses. While releasing government contracts to the bogus company, (it is quite difficult to reveal, but possible).*

– *«Generally, this is of course a very serious problem. The question is, that monitoring of such situations was not performed on permanent basis. There were cases, when commercial firms selling the medicines, and NCEMMD structures were physically located in the same building».*

– *«...transfer of assets to the trust management while doing the public duties does not remove the earth under the Conflicts of Interests appearance, because legally the public official does not lose an ownership. This is a huge problem currently, resulting from human factor».*

To correct the situation and lower the risks of Conflicts of Interests appearing in the public service while performing trust management and offices renting, the experts recommend the following measures.

Firstly, to perform measures of the lawful, organizational and institutional nature, oriented at assurance of the compliance with the requirements of the effective legislation of the RoK in the specified sphere of legal relations, including by method of introducing the system of obligatory declaration of present Conflicts of Interests.

Secondly, to create in such organization of effective, and not formal, tools and institutions, oriented at the forecasting, checkup and revealing the conditions and facts of Conflicts of Interests; performance of the effective control over the decision-making processes in the part of excluding from them of the Conflicts of Interests; assurance of the transparency and openness of the operations.

Thirdly, performance on a permanent basis of the audit, and enforcing the human resources operations.

### ***Conclusions***

To summarize the research above, the following conclusions shall be formulated.

1. The Conflicts of Interests are caused by terms both objective and subjective factors. As per the opinion of the experts, the most corruption-related and at the same time widely spread typical situations with the Conflicts of Interests are: Conflicts of Interests, related to the solution of human resources issues, with procurement, with government property management, when performing auditing operations, with gifts acceptance, Conflicts of Interests of the agencies.

2. High corruption risks are present in all government agencies and subjects of the quazi-government agency, where the efficient system for Conflicts of Interests management is missing. At the same time among the government sector the higher risks are with the organizations, having controlling functions, permissive functions, large volumes of the government procurement, access to information, classified as the government secrets, distributing budget means. In the quazi-government sector, the risk level increases if there is not detailed regulation for tasks and functions, control, official duties, limitations, procedures for decision-making by separate public officials.

3. The most common Conflicts of Interests faced in their practice, the experts named as situations, related to job recruitment, participation in the procurement, joined work of people with family ties, distribution of bonuses, land sections and etc. In the opinion of the experts, the public officials (employee) are not interested in disclosing the Conflicts of Interests situations, first of all, if they are acknowledged, secondly, if they are not ready to put under threat their safety and position, thirdly, due to the passing of the psychological discomfort.

4. The majority of the experts assumes, that the existing legislation acts do not allow regulating the Conflicts of Interests issues in a due manner. The main loops are represented in the vague understanding of the notion “Conflicts of Interests”, envisaged in the legislation, missing requirements for the strict and

permanent monitoring and revealing the Conflicts of Interests, absence of the government agency, responsible for systematic revealing of the Conflicts of Interests, absence of the legislative limitations and etc.

5. The experts failed to form a single and unified opinion with regard to the improvement of Conflicts of Interests institution. More often, the experts proposed such measures as: 1) increasing the transparency of the decisions, made by the public officials in all levels, changing the culture of the government administration; 2) development of exact instructions and mechanisms for Conflicts of Interests settlement depending on a sphere and kinds of Conflicts of Interests; 3) declaring Conflicts of Interests by the public officials; 4) permanent monitoring of potential and actual Conflicts of Interests; 5) enforcement of disciplinary and administrative responsibility for failure to take measures to settle Conflicts of Interests; 6) improvement of the definitions system, fixing principles, functions and authorities of all subjects, participating in the Conflicts of Interests management processes. 7) development of the methodic recommendations for government agencies and subjects of the quazi-government sector.

6. The most important conditions, able to affect upon increasing the interest of public officials to perform actions on prevention and settling of the Conflicts of Interests, as per the opinion of many experts, are: 1) increase of the salary level, introduction of strict sanctions for failure to prevent and failure to settle the situations, related to the Conflicts of Interests; 2) openness, knowledge of own rights, absence of the fear to be dismissed, punished, pointed at after reporting or facing such situation, psychological preparation and training; 3) acceptance of a separate legislative act for protection of informants, where all methods and tools will be indicated for informants data protection, financial stimulation and public acknowledgement are envisaged; 4) introduction of the ethics process into the government service through the work of ombudsmen for ethics, who shall be authorized to perform ethical investigation, removal from works of the ethics offenders, applying penalties and etc.

7. Many experts stated, that the experience of the OECD countries in checkups, revealing and settling of Conflicts of Interests, is the most interesting and challenging for the Republic of Kazakhstan. For example, in the legislation of many OECD countries, there are detailed descriptions given for Conflicts of Interests samples with detailed clarifications; the mechanism is in place for overall declaration and unjustified wealth accumulation; there are institutions for personal and family property declaration institutions, declaring personal interests, related to the contracts administration; declaring personal interests, related to the decision-making process or voting.

8. Many experts assume that there is a high risk of Conflicts of Interests probability when performing the trust management and offices renting by government and quazi-government agencies due to the irregularities of the existing stipulations in this sphere and absence of the transparency in organizations' operations. As per their opinion, it is necessary to improve the existing institutions: transfer of assets of the public officials to the "blind trust", declaring the interests, introduction of the control (compliance service), ensuring the transparency and

openness of organizations' operations, performance on the permanent background of audit and monitoring, and then enforcement in this part of the human resource operations.

### **2.3 Recommendations for the improvement of the Conflicts of Interests settlement institution and the trust management institution**

Based on the results of the study, we offer a number of recommendations for the effective prevention and settlement of conflicts of interest in the public service. In our opinion, changes in this area are ripe. Despite all the legislative efforts being made, the institution of conflict of interest settlement still contains significant shortcomings and gaps that negatively affect law enforcement practice.

The main block of recommendations was developed based on the analysis of the regulatory legal framework of the institution for resolving conflicts of interest and is devoted exclusively to the development of systemic measures in this area at the legislative level. The second part of the recommendation is based on the results of an expert survey and, first of all, contains elements of an organizational and methodological nature.

#### **Recommendations resulting from the analysis of the legislative backgrounds of the Conflicts of Interests settlement institution and the trust management's institution application efficiency in the Republic of Kazakhstan**

**I.** To incorporate the following changes and amendments into the RoK Legislative Act "For public service":

1) To recite the revision of cl. 17) art. 1 in the following way – «the Conflicts of Interests – mean the contradiction between personal interests of the public official and his official duties, where the personal interests of the public official might cause failure to perform or inappropriate performance by him of his official duties».

2) To envisage the following ranging for the Conflicts of Interests – possible Conflicts of Interests, actual Conflicts of Interests, Conflicts of Interests leading to failure to perform or inappropriate performance of the official duties.

3) To recite Chapter 8 in the following way

#### ***«Chapter 8. WORK ETHICS AND CONFLICTS OF INTERESTS OF THE PUBLIC OFFICIALS***

**1.** *The public official shall not perform official duties, if there are Conflicts of Interests.*

**2.** *The public official shall take measure to prevent, eliminate and settle Conflicts of Interests.*

**3.** *The public official shall inform in written form within three business days his immediate executive or the executive of the government agency about appeared Conflicts of Interests or about possibility of their appearance, as soon as he knows this himself.*

*The immediate executive or the executive of the government agency with reference to the application of the public official or to the receive from other sources shall timely take actions to prevent, reveal, eliminate and settle the*

*Conflicts of Interests, but not later than thirty business days from the application or information receive moment.*

**4. The actions to reveal the Conflicts of Interests include:**

- 1) *Declaring by the public official, his family relatives of their incomes, expenses, property, assets and liabilities when applying for public position;*
- 2) *Studying the presence of family relations and other close relations between the employer and the subordinates when accepting for the public position;*
- 3) *Checking the affiliated subjects with the executives of the government agencies when performing the government procurement by them in accordance with the legislation for the government procurement;*
- 4) *Informing the executive of higher level or a commission for ethics of the relevant agency about appeared Conflicts of Interests;*
- 5) *Reviewing and studying the applications and complaints, received to the government agency and (or) organization;*
- 6) *Monitoring and analysis of publications and messages in the mass media sources.*

*Checking the declarations for the income, expenses, property, assets and liabilities shall be performed by the ombudsmen for ethics in the government agencies.*

**5. The measures to settle the Conflicts of Interests include:**

- 1) *Clarifying for the public official of present or possible presence of the Conflicts of Interests;*
- 2) *Clarifying for the public official of his duties and rights in the situations with the Conflicts of Interests;*
- 3) *To instruct another public official to perform the official duties of the public official in the issue, in relation to which the Conflicts of Interests appeared or might appear.*

**6. The measures to prevent Conflicts of Interests include:**

- 1) *Removing the public official from performing his official duties;*
- 2) *Removing by the public official of his personal interests;*
- 3) *Setting access limits for the public official to the certain information, classified as the Conflicts of Interests;*
- 4) *Refusing from (rejecting) the public official from his participation in making decision, related to the Conflicts of Interests;*
- 5) *Changing the official duties of the public official, so that this excludes the Conflicts of Interests;*
- 6) *Shifting the public official to the position, not related to the Conflicts of Interests.*

**7. The measures to eliminate the Conflicts of Interests include:**

- 1) *Making legislative acts, establishing and regulating prevention, revealing, elimination and settling the Conflicts of Interests in the government service sphere*
- 2) *Analysis of the international experience and work-related examination of the public officials operations as per the result of happened consequences from*



*the Conflicts of Interests with development of an action plan with preventative nature;*

3) *Regular informing the public officials about results of the examination of applications, complaints, messages about presence of the Conflicts of Interests.*

4) *The executive of the government agency or the ombudsman for ethics shall make minutes of all situations with actual Conflicts of Interests and shall inform the public official about specific measures taken to settle the Conflicts of Interests.*

8. *Acts or agreements, published or made by the public officials with premeditated violation of the statutes of this chapter of the legislative act, shall be acknowledged by the Court as obsolete.*

#### **10. THE SUBJECTS, RESPONSIBLE FOR IMPLEMENTATION OF THE STATUTE OF THIS LEGISLATIVE ACT FOR PREVENTION, REVEALING, ELIMINATION AND SETTLING OF THE CONFLICTS OF INTERESTS.**

*The subjects, responsible for implementation of the stipulations of this Legislative act in terms of prevention, revealing, elimination and settlement of the Conflicts of Interests are represented by the authorized government agency, ombudsman for ethics of the government agency, human resource of the government agency.*

#### **11. THE AUTHORIZED GOVERNMENT AGENCY IN THE PUBLIC SERVICE SPHERE:**

1) *Coordinates the work of the government agencies on prevention, revealing, elimination and settlement of the Conflicts of Interests;*

2) *Develops the draft projects for the legislative acts, methodic recommendations for prevention, revealing, elimination and settlement of the Conflicts of Interests in the sphere of the public service;*

3) *Arranges the scientific processing and training of the government public officials in prevention, revealing, elimination and settling the Conflicts of Interests;*

4) *Performs monitoring and analysis of the operations of the ombudsman for ethics in the government agencies.*

#### **12. THE EXECUTIVE OF THE GOVERNMENT AGENCY:**

1) *Ensures the timely execution of measures on prevention, revealing, elimination and settlement of the Conflicts of Interests;*

2) *Creates and ensures the terms for efficient work of the ombudsman for ethics;*

3) *Develops and approves the agency's legislative acts for Conflicts of Interests;*

4) *Makes decision for execution of work-related examination of the public official operations as per the results of the happened consequences from the Conflicts of Interests, including those targeted at the restoration of the public trust;*

5) *Applies the disciplinary penalties for failure to take measure to settle the Conflicts of Interests;*

6) *Applies stimulation actions for honest and fair behavior when Conflicts of Interests appear.*

**13. THE HUMAN RESOURCES OF THE GOVERNMENT AGENCY:**

1) *Quarterly informs the authorized agency in the public service sphere about revealed Conflicts of Interests and the measures taken;*

2) *Implements changes into the job descriptions of the public official;*

3) *Performs transfer of public official to the position, not related to the Conflicts of Interests.*

4) *13. The public official, his immediate executive and the executive of the government agency all bear the disciplinary responsibility for the failure to take measures to prevent and settle the Conflicts of Interests, known to them.*

**II.** To incorporate the following changes and amendments into the RoK Legislative Act “For corruption termination”:

1) Article 11. Measures of the financial control

«2. Declarations for assets and liabilities shall be issued by:

1) Candidates to the Presidency of the Republic of Kazakhstan, the Republic of Kazakhstan Parliament and maslikhat members, akims of the towns with district value, villages, settlements and also members to the selective agencies of the local management and **their close family members** – prior to registration as candidates;

2) officials, being candidates for public position or position, related to performance of the government or equal the it functions, and **their close family members**, excluding the officials, indicated in the sub-clause 1) of this clause, - prior to the issuing the act of the public official (agency), having the right to assign for the position, about assigning for the positions (as of the first day of the month of the declaration submission).

3. Declaration for income and property shall be issued by:

1) officials, having a significant public position, and **their close family relatives**;

2) officials, authorized to perform government functions, and **their close family members**;

3) public officials and **their close family relatives**;

4) officials, equaled to the officials, authorized to perform the government function and **their close family relatives**.

4. In case of purchasing during the financial calendar year of the property, defined by the tax legislation of the Republic of Kazakhstan, officials, indicated in the clause 3 of this article, in the declaration for income and property shall include the information about sources to cover expenses to purchase the indicated property.

2) In the Article 15. The Conflicts of Interests

«3. Officials, indicated in the clause 1 of this article, shall inform in a written form their immediate executive or the executive of the agency, where they work, about appeared Conflicts of Interests or about the possibility of its appearance, as soon as they understand this”.

*The first executive of the government agency shall inform the authorized agency for corruption termination about appeared Conflicts of Interests or the possibility of its appearance, as soon as he learns this fact».*

**III.** To implement the following changes into the Directive of the President of the Republic of Kazakhstan dated December 29, 2015 numbered No. 153 “Ethics code for public officials of the republic of Kazakhstan (The Regulations for public ethics for government officials)”:

«4. The Ombudsman for ethics shall perform within the limits of his competence the following functions:

...

12) *Within the commission reviews and issues recommendations for received applications and messages about the Conflicts of Interests of the public service;*

13) *Informs the executive of the public agency about presence of the Conflicts of Interests of the public official;*

14) *Performs clarification activities among the public officials for prevention, revealing, elimination and settlement of the Conflicts of Interests, and clarification of the legislation, regulating the procedure for the Conflicts of Interests settlement;*

15) *Performs checkup of the applications, complaints, messages about presence of the Conflicts of Interests of the public official;*

16) *Checking the declarations for income, expenses, property, assets and liabilities while applying of the candidate to the public position;*

17) *informs the authorized government agency about violation of requirements for Conflicts of Interests, and about measures performed to address those facts.*

**IV.** To process with the concerned government agencies and to review the possibility of implementing the “blind trust” institution in the cases of Conflicts of Interests with the public official.

**V.** To envisage in the trust management agreement of the public official the following requirements:

- about Conflicts of Interests of the entrusted manager;
- about submission of information to the authorized agency for public service in line the relevant response;
- about informing the public official on the establishment of the business relations with government agencies, organizations and enterprises;
- about the prohibition for public official to advertise and make presentation of own property, transferred to the trust management.

**VI.** To add into the typical agreement for the trust management the clause with **the Conflicts of Interests.**

The indicated clause shall contain **the following requirements.**

1. The entrusted manager shall comply with the existing legislation and shall ensure the prevention of the Conflicts of Interests, and shall act to the benefits of the founder of the management, the beneficiary party in accordance with the trust management agreement.

2. The entrusted manager shall perform operations with the property, transferred to the trust management, in accordance with the market prices and shall avoid operations, which can lead to the appearance of the Conflicts of Interests.

3. The employees of the entrusted manager with the aim to prevent the appearance of the Conflicts of Interests shall restrain of while performing operations on trust management:

- participation in the transactions, where the subjects are involved, with whom this official or a member of his family has personal relationships or financial interests;

- transfer of work-related information for making the transactions by third parties, and usage of work-related information for making transactions.

4. The entrusted manager shall perform development and shall ensure the control over the compliance of the employees with the regulations for limitations, placed for exchange of work-related and confidential information. This is necessary to prevent the appearance of the Conflicts of Interests between its different functional divisions.

To execute this requirement, the entrusted manager shall perform the following measures:

- about the disclosure of the confidential information (the written obligations of the employees);

- the functional and procedural separation of the relevant divisions (information safety and protection of computer networks of the divisions, performing operations on trust management and etc.);

- separate subordination of the relevant functional divisions of the entrusted manager;

- territorial isolation of the officials and the documents, related to the operations of the trust management.

### **Other recommendations**

1) **To develop a short manual with Conflicts of Interests for public officials** (*based on the example of the manual, developed in 2018 by the Academy for government management, "Ethics and behavioral rules for the public official"*), where in understandable manner all situations will be described, which can lead to Conflicts of Interests, and what to do, if the situation is happening. Additionally, this manual shall contain visual cases with specific precedents, based on the court practices and reviews for practical law application in the Conflicts of Interests sphere.

2) **To update Methodic manual with Conflicts of Interests issues in the Republic of Kazakhstan public service, prepared by the authorized agency for the government service sphere.**

The methodic manual devoted to Conflicts of Interests issues in the public service of the Republic of Kazakhstan, with systematized review of the typical

situations for Conflicts of Interests and with recommendations for government agencies and government officials on checkups, revealing and settling of the Conflicts of Interests, was developed in our country back in 2016 and aged significantly. During this time the legislation in the public service sphere and corruption termination was revised significantly, new important experience was gained in the sphere of Conflicts of Interests revealing and settling. Additionally, the indicated methodic manual covers only a small part of the issues, appearing in the practice while making decisions about presence or absence of the Conflicts of Interests and development of an action plan for its settlement. They may be filled with other problematic aspects, including those, covered within the frames of this research, for example, Conflicts of Interests appearing while performing the trust management and offices renting by the government and quazi-government agencies.

3) To check the chances to develop the regulations for relationships to avoid the Conflicts of Interests of the political public official, related to business, new and old jobs after the dismissal.

4) To create an open interactive map with premises and government property, transferred to the trust management, containing the results of inventory checking and other property complexes of the government, including public-private partnerships, privatizing, rental agreements and also declaring the personal interests of the transaction participants.

5) To process with concerned government agencies and initiate the review for the opportunities to implement the “blind trust” institution in cases with Conflicts of Interests of the public official.

6) To envisage in the trust management agreement for the public official’s property the requirements:

- about Conflicts of Interests of the entrusted manager;
- about an obligation to provide information to the authorized agency for government service issues as per the corresponding request;
- about informing the public official about establishing business relationships with the government agencies, organizations and enterprises;
- about prohibition for public official to advertise and make presentations of own property, transferred to the trust management.

### **Recommendations resulting from the experts’ interviewing**

In accordance with the results of the performed survey, what meant that the information received from the experts was analyzed in details, with adding of our own opinion, it became possible to list specific measures, which with their implementation, might as per our viewpoint, assist in prevention and settling of the Conflicts of Interests in the public service. These actions include:

1) *Introduction of the new mechanism to control appearance of the Conflicts of Interests situation – declaration of the public officials interests (“pro-active declaration”).*

With the help of this mechanism it is possible to get critically important, for Conflicts of Interests regulation, information about connections of the public

officials and the members of their family with different organizations and individuals. This practice is used widely in the OECD countries, particularly in the USA and Canada.

The declarant shall include into the declaration different information: the information about source of income of the official and the members of his family, different information about specific organizations, he received the income from. The public officials more and more often are requested to provide information about unpaid operations (membership) in different organizations, about previous work places, accepting gifts and other goods from organizations and individuals.

Additionally, submitted information shall be checked on a regular basis not only for the integrity, but for the presence of the actual and potential Conflicts of Interests.

2) *Enforcing the authorities of the ombudsman for ethics in a part of revealing and eliminating the Conflicts of Interests (on the example of compliance services in the quasi-public and private sectors).*

The Ethics Officer should be designated as responsible for receiving information on emerging (existing) conflicts of interest in the organization. At the same time, it is advisable to consider the information received collectively at a meeting of the Ethics Council.

It is necessary to include in the regulation on the status and activities of the ethics commissioners the following regulation in terms of identifying and resolving conflicts of interest.

First, the Ethics Officer should communicate to all employees the procedure for disclosing conflicts of interest and their obligation to report any actual or potential conflict of interest that is directly or indirectly related to their field of activity.

It is advisable to disclose information about a conflict of interest in writing. It may be permissible to initially disclose a conflict of interest verbally followed by a written record.

Second, the Ethics Officer should keep a record of any circumstances of actual or potential conflict of interest and whether action has been taken to mitigate the conflict.

Third, the Ethics Officer must commit to confidentially reviewing the submitted information and resolving conflicts of interest.

Fourth, the information received must be carefully checked in order to assess the severity of the risks arising for the organization and to choose the most appropriate form of conflict of interest settlement. It should be borne in mind that as a result of this work, the Ethics Commissioner may come to the conclusion that the situation, information about which was submitted by the employee, is not a conflict of interest and, as a result, does not need special settlement methods. The Ethics Officer can also conclude that a conflict of interest exists and use a variety of ways to resolve it, for example:

- restricting employee access to specific information that may affect the employee's personal interests;

- voluntary refusal of an employee of the organization or his removal (permanent or temporary) from participation in the discussion and decision-making process on issues that are or may be influenced by a conflict of interest;
- revision and change of the employee's functional duties;
- temporary suspension of an employee from office if his personal interests conflict with functional duties;
- transfer of an employee to a position that provides for the performance of functional duties that are not related to a conflict of interest;
- transfer by the employee of the property belonging to him, which is the basis for the emergence of a conflict of interest, in trust management;
- refusal of the employee from his personal interest, which generates a conflict with interests.

When deciding on a specific method for resolving conflicts of interest, it is important for the Ethics Commissioner to consider the significance of the employee's personal interest and the likelihood that this personal interest will be realized to the detriment of the interests of the organization.

3) Increasing the transparency of decisions made by civil servants at all levels, changing the culture of public administration.

4) Determination of areas (procurement, personnel, development and adoption of legal acts) as main and additional / accompanying. Development of clear instructions and mechanisms / tools on how to act in the situation of a conflict of interest, depending on the area, which laws apply, and what responsibilities are provided.

5) In the Law "On Civil Service" it is necessary to devote a separate chapter, where it is necessary to clearly and in detail set out the procedure for not just voluntary disclosure of a conflict of interest, but namely the procedure for constant monitoring and active disclosure of potential and real conflicts of interest, as well as determining the specific structures responsible for this ...

6) Strengthening the disciplinary and administrative responsibility of civil servants for failure to take measures to resolve conflicts of interest.

7) Organization of continuous training of civil servants on issues of conflict of interest. Securing responsibility for the creation of prerequisites for a conflict of interest and assigning a responsible state body for identifying such conflicts of interest, assigning authority to the public to identify conflicts of interest within the framework of the Law on Public Control, mandatory AO).

8) To oblige a separate state body to check the data of the declaration for compliance with reality.

9) Specification of the range of subjects of the conflict of interest. Most often, we associate a conflict of interest with close relatives, but there are many other connections - colleagues, neighbors, classmates, friends, etc. Until the circle of subjects is determined, there will be no clear understanding of this phenomenon.

10) Improving the conceptual framework, consolidating the principles of managing conflicts of interest, as well as the functions and powers of all actors involved in the processes of managing conflicts of interest.

11) Additionally, develop a package of relevant guidelines for government bodies and subjects of the quasi-public sector.

12) As part of the internal and external analyzes of corruption risks, it is recommended to strengthen the expert analysis in the direction - "Conflict of interest".

13) It is recommended that the provisions on conflict of interest be consolidated at the level of all internal acts of state bodies and subjects of the quasi-public sector concerning issues and decision-making procedures, including issues of forming commissions, resolving personnel issues, making decisions on procurement issues, etc.

14) Further development of the system of administrative and official regulations.

15) Involvement of civil society institutions in the organization of implementation and monitoring of the implementation of norms for resolving conflicts of interest.

An important condition for effective prevention of cases of conflict of interest is to ensure open access to various data. The legislation on personal data blocks the work to identify a conflict of interest, since it is often associated with information about third parties. In addition, such concepts as "tax secrets", "bank secrets", "commercial secrets" or official information of the internal state audit services, audit commissions based on the results of audits and others require revision. Law enforcement structures have access to such information within the framework of specific criminal cases, that is, information is provided when a criminal act has already been committed".

16) Adoption of a separate law on the protection of whistleblowers, which will spell out all the methods and tools for protecting the data of individuals, material incentives and public recognition are provided.

17) Increasing the transparency and openness of the activities of civil servants, as well as persons working in quasi-state companies (openness of the processes of considering appeals and decision-making, publication of tax returns, the possibility of assessing their professional activities, etc.). In conditions of control by citizens, civil servants and workers of the quasi-public sector will be interested (forced) to prevent and resolve situations associated with a conflict of interest.

18) Elimination of contradictions between administrative regulations, job descriptions, on the one hand, and targets on the other hand.



## CONCLUSIONS

Based on the above stated, it is necessary to make the following conclusions.

The RoK legislation established the Conflicts of Interests institution, corresponding in a certain degree to the international lawful documents.

At the same time, no efficient mechanism is in place to implement the Conflicts of Interests settlement institution in the public and quazi-government sectors.

This is also supported by the results of the analysis of the Rok Legislation and of the performed experts' interviewing.

The authors of the project considered the international experience and the experts evaluations and made a set of recommendations, targeted at the improvement of the legal regulation of the Conflicts of Interests settlement institution in the sphere of the public service.

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Article 1. The main notions, used in this Legislative Act  
Hereby in this Legislative Act the following notions are in use:

...

17) the Conflicts of Interests – the contradiction between the personal interests of the public official and his official ~~duties~~ obligations, when personal interest of the public official can lead to failure to perform or inappropriate performance by them of the official duties;

...

#### **Chapter 8. THE WORK ETHICS AND CONFLICTS OF INTERESTS OF THE PUBLIC OFFICIALS**

**9.** The public official shall not perform official duties, if there are Conflicts of Interests.

**10.** The public official shall take measure to prevent, eliminate and settle Conflicts of Interests.

**11.** The public official shall inform in written form within three business days his immediate executive or the executive of the government agency about appeared Conflicts of Interests or about possibility of their appearance, as soon as he knows this himself.

**12.** The immediate executive or the executive of the government agency with reference to the application of the public official or to the receive from other sources shall timely take actions to prevent, reveal, eliminate and settle the Conflicts of Interests, but not later than thirty business days from the application or information receive moment.

#### **13. The actions to reveal the Conflicts of Interests include:**

7) Declaring by the public official, his family relatives of their incomes, expenses, property, assets and liabilities when applying for public position;

8) Studying the presence of family relations and other close relations between the employer and the subordinates when accepting for the public position;

9) Checking the affiliated subjects with the executives of the government agencies when performing the government procurement by them in accordance with the legislation for the government procurement;

10) Informing the executive of higher level or a commission for ethics of the relevant agency about appeared Conflicts of Interests;

11) Reviewing and studying the applications and complaints, received to the government agency and (or) organization;

12) Monitoring and analysis of publications and messages in the mass media sources.

13) Checking the declarations for the income, expenses, property, assets and liabilities shall be performed by the ombudsmen for ethics in the government agencies.

**14. The measures to settle the Conflicts of Interests include:**

4) Clarifying for the public official of present or possible presence of the Conflicts of Interests;

5) Clarifying for the public official of his duties and rights in the situations with the Conflicts of Interests;

6) To instruct another public official to perform the official duties of the public official in the issue, in relation to which the Conflicts of Interests appeared or might appear.

**15. The measures to prevent Conflicts of Interests include:**

7) Removing the public official from performing his official duties;

8) Removing by the public official of his personal interests;

9) Setting access limits for the public official to the certain information, classified as the Conflicts of Interests;

10) Refusing from (rejecting) the public official from his participation in making decision, related to the Conflicts of Interests;

11) Changing the official duties of the public official, so that this excludes the Conflicts of Interests;

12) Shifting the public official to the position, not related to the Conflicts of Interests.

**16. The measures to eliminate the Conflicts of Interests include:**

5) Making legislative acts, establishing and regulating prevention, revealing, elimination and settling the Conflicts of Interests in the government service sphere ;

6) Analysis of the international experience and work-related examination of the public officials operations as per the result of happened consequences from the Conflicts of Interests with development of an action plan with preventative nature;

7) regular informing the public officials about results of the examination of applications, complaints, messages about presence of Conflicts of Interests.

**17.** The executives of the government agency or the ombudsman for ethics shall make minutes of all situations with actual Conflicts of Interests and shall inform the public official about specific measures taken to settle the Conflicts of Interests.

**18.** Acts or agreements, issued or made by the public officials with the premeditated violation of the stipulations of this chapter of the Legislative Act, can be acknowledged by the Court as obsolete.

**10. THE SUBJECTS, RESPONSIBLE FOR IMPLEMENTATION OF THE STATUTES OF THIS LEGISLATIVE ACT FOR PREVENTION, REVEALING, ELIMINATION AND SETTLEMENT OF THE CONFLICTS OF INTERESTS.**

The subjects, responsible for implementation of the statutes of this legislative act for prevention, revealing, elimination and settlement of the Conflicts

of Interests, are the authorized government agency in the public service sphere, the executive of the government agency, the ombudsman for ethics in the government agency, the human resource division of the government agency.

**11. THE AUTHORIZED GOVERNMENT AGENCY IN THE PUBLIC SERVICE SPHERE:**

5) Coordinates the operations of the public agencies on prevention, revealing, elimination and settlement of the Conflicts of Interests;

6) Develops drafts of projects of legislative acts, methodic recommendations for prevention, revealing, elimination and settlement of the Conflicts of Interests in the public service sphere;

7) Arranges scientific processing and training for the government officials to prevent, reveal, eliminate and settle Conflicts of Interests;

8) Performs monitoring and analysis of the operations, performed by the ombudsman on ethics in the government agencies.

**12. THE EXECUTIVE OF THE GOVERNMENT AGENCY:**

7) assures timely taking measures for prevention, revealing, elimination and settlement of the Conflicts of Interests;

8) creates and ensures the conditions to perform the efficient work for the ombudsman for ethics;

9) develops and approves the agencies legislative acts for Conflicts of Interests;

10) makes decision for execution of the official checkup for the public official's operations as per the results of the happened consequences from Conflicts of Interests, public trust restoration included;

11) applies the disciplinary penalties for failure to take actions on Conflicts of Interests settlement;

12) takes actions to compensate for the honest and loyal behavior at the moment when Conflicts of Interests appear.

**13. THE HUMAN RESOURCE SERVICE OF THE GOVERNMENT AGENCY:**

5) quarterly informs the authorized agency in the public service sphere about revealed Conflicts of Interests and taken measures;

6) implements changes in the official duties of the public official;

7) performs transfer of public official to a position, not related to the Conflicts of Interests.

13. The Public official, his immediate executive and the executive of the government agency shall bear disciplinary responsibility for the failure to take actions on prevention and settlement of the Conflicts of Interests, known to them.



Changes and amendments to THE REPUBLIC OF KAZAKHSTAN  
LEGISLATIVE ACT  
dated November 18, 2015 No. 410-V  
«For corruption termination»

**Article 11. Measures of financial control**

1. With the aim to perform the measures of the financial control, the people, defined in this article, provide the following declarations of the individuals:

- 1) declaration for assets and liabilities;
- 2) declaration for income and property.

2. Declaration for assets and liabilities shall be submitted by:

1) candidates to Presidency of the Republic of Kazakhstan, the Republic of Kazakhstan Parliament and maslikhats members, akims of the towns with district value, of the villages, of the settlements, and the members of the selective agencies of the local self-management and their close relatives – prior to registration as a candidate;

2) officials, registered as candidates to the public position or position, related to performance of government and equal to them functions, and their close family members, excluding officials, indicated in the sub-clause 1) of this clause, – prior to the issuance of the public official (agency) act, authorized to assign to the position, about acceptance to position (as of the first day of the month of declaration submission).

3. Declarations for income and property shall be submitted by:

1) officials, holding an important government position and their ~~spouse~~ close family members;

2) officials, authorized to perform government functions, and their close family members;

3) public officials and their close family members;

4) officials, equaled to officials, authorized to perform government functions and their close family members.

4. In case if during the financial calendar year, a piece of property is purchased as defined by the Republic of Kazakhstan taxation legislation, then officials, specified in the clause 3 of this Article, shall report the information in the declaration for income and property in the sections with sources of covering the expense on purchasing the specified property.

9. The information to be published prior to the December 31 of the year, following the financial calendar year, included into the declarations of the individuals, who were provided by the following officials and their close family relatives:

- 1) holding political public positions;
- 2) holding administrative public positions of the “A” corpus;
- 3) Members of the Republic of Kazakhstan Parliament;
- 4) judges of the Republic of Kazakhstan;

5) officials, performing managing functions in the subjects of the quazi-government sectors.

### **Article 15. Conflicts of Interests**

3. Officials, specified in the clause 1 of this Article, shall in written form inform the immediate execute or the executives of the organization, where they work, about the appeared Conflicts of Interests or about a possibility of their appearance, as soon as they get to know this.

The first executive of the government agency shall inform the authorized agency on corruption termination about the appeared Conflicts of Interests or about a possibility of their appearance, as soon as they get to know this.

To be added into the Directive of the President of the Republic of Kazakhstan  
dated December 29, 2015 No. 153

«The Ethical code for the Republic of Kazakhstan public officials  
(The Regulations for the work ethics of the public officials)»

**STATUTE**  
**For ombudsman in ethics**

«2. The main functions of the ombudsman in ethics

4. The ombudsman for ethics within his competence limits shall perform the following functions:

...

18) as a member of the commission shall review and issue recommendations for the received applications and messages about Conflicts of Interests of the public official;

19) informs the executive of the government agency about Conflicts of Interests of the public official;

20) performs clarification activities among the public officials on prevention, revealing, elimination and settlement of Conflicts of Interests, and also for clarification of legislation, regulating the procedure for the Conflicts of Interests settlement;

21) performs examination of applications, complaints, messages about Conflicts of Interests of the public service;

22) examines the declarations for income, expenses, property, assets and liabilities when the candidate applies for public service;

23) informs the authorized government agency about violation of requirements for the Conflicts of Interests, and about measures taken against them.

## **Interviewing experts**

**Title of the research:** Development of the systematic measures to prevent Conflicts of Interests.

**Researchers:** The Academy of the Government Administration under the President of the Republic of Kazakhstan.

**Aim of the research:** definition of efficient legislative and organization measures, targeted at prevention, revealing and settlement of the Conflicts of Interests in the public service.

### *Dear Participant!*

– We would like to thank You for agreeing to participate in this experts' interview for our research. Our research is planned to analyze the system of Conflicts of Interests settlement, and to study the system of trust management. The final aim of this research is the development of the recommendations for improving the Conflicts of Interests settlement institution in the public service.

Your responses are confidential and will be used only within the frames of this research. The interview is arranged on anonymous basis, no one will know Your name or any other personal data.

In relation to all stated above, we request You to be open and provide responses to the questions objectively.

1) As per your opinion, what type of the Conflicts of Interests represents the most corruption-related in the public service in the Republic of Kazakhstan, to be prevented in the first place (*Conflicts of Interests, related to solving the cadaster issues, government property managed, performance of government procurement, acceptance of gifts and receiving services and etc.*)? Why?

2) How do you think, what agencies of the authority, governmental and quazi-governmental organizations are more affected by the corruption risks, related to the Conflicts of Interests? Why?

3) What kinds of Conflicts of Interests did you face with in your professional activities? What kind of help was useful for you when settling the Conflicts of Interests (*legislative requirements, centralized coordination, trainings, consultations and etc.*)?

4) How do you think, how efficient are the existing legislative stipulations for checkups, revealing and settlement of the Conflicts of Interests in the Republic of Kazakhstan public service? What are the main loops in the administrative and court-related practices?

5) What international experience on Conflicts of Interests checkup, revealing and settlement, in your opinion, could prove effective with consideration of existing behavior standards in the Republic of Kazakhstan public administration? For example, do you have any proposals for the following:

- Incorporating changes into the separate legislative acts or duties description;
- Creation of necessary courtship and administrative precedents;
- Increasing transparency of the decisions, made by the government officials in all levels;
- Changing the culture of the government administration;
- any other.

6) What international experience for prevention, revealing and settlement of the Conflicts of Interests, in your opinion, can be efficient with consideration of the existing behavior norms in the system of the Republic of Kazakhstan public administration?

7) How do you think, what shall be done to make public officials interested in the prevention and settlement of the situations, related to the Conflicts of Interests?

8) How do you think, are the currently existing standards effective in Conflicts of Interests prevention in the public service when performing trust management and rental of offices by government and quazi-government agencies? Do you know the practices, when public officials, were holders of the assets, and made decisions in that sphere? Is there a problem in assuring the transparency when placing the government agencies into the private buildings? What measures can you propose to checkup the Conflicts of Interests when solving such issues?