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Regulating the Revolving Door

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Regulating the Revolving Door

In recent years, the public sector has developed an increasingly close relationship with the private sector. The rise of public-private partnerships, the continued push toward privatisation, the increased role of lobbying, and the reliance on public contracting have all put government in more intimate contact with business.

In the case of federal government lobbying, expenses in the United States have more than doubled in the last 10 years. They topped nearly US\$ 3.5 billion in 2009, a rise which has helped to push the ranks of lobbyists to more than 13,700.¹ There are even more lobbyists in Brussels, where 15,000 people work for an estimated 2,500 lobbying organisations that attempt to shape policy-making in the European Union.²

Increased interaction between business and government has also meant increased opportunities for corruption. A rise in conflicts of interest, and the creation of a 'revolving door' in government, demonstrates the thinning of boundaries between the public and private spheres.

Table of Contents

1. What is the revolving door?
2. What are the corruption risks?
3. What are the remedies?

1. What is the revolving door?

The term 'revolving door' refers to the movement of individuals back and forth between public office and private companies,³ in order to exploit their period of service to the benefit of their current employer. According to data from the Organisation for Economic Co-operation and Development (OECD), over 75 per cent of new entrants in senior positions in the UK government came from outside the public service, who after a period of four to five years, sought to return to the private sector or the not-for-profit world.⁴ Some sectors that have been particularly prone to the revolving door phenomenon include health, agriculture, finance, energy and defence.

The 'revolving door'⁵ can move in two directions:

*From government to the private sector (i.e. post-public employment):*⁶ Public officials (elected or appointed) and civil servants move to lucrative private sector positions, where they may use their government experience and connections to unfairly benefit their new employer. For example, there is a trend in many capitals of former lawmakers and executive branch officials becoming paid lobbyists, using inside connections to advance the interests of their corporate clients. Public officials may even favour certain companies or sectors in their decisions while they are in office in the hope of landing a job in the corporate world once they exit government.

*From the private sector to government (i.e. pre-employment):*⁷ The appointment of corporate executives to key public offices and posts in government raises the possibility of a pro-business bias in policy formulation and regulatory enforcement. Another risk comes from lobbyists who leave consultancies, think-tanks or trade associations to join the government in an advisory or decision-making capacity.

In order to enhance transparency in policy making and preserve the public's interest, many countries are beginning to establish or strengthen their legal frameworks to better regulate the revolving door. The aim is not to completely close the door, since the movement of skilled experts between sectors helps to bring innovation and different perspectives into government and business. Instead, most regulations seek to prevent the abuse of switching sectors ('sides') in order to unfairly and unethically leverage insider networks and knowledge.

2. What are the corruption risks?

The main concern regarding the revolving door phenomenon is how it compromises the integrity and impartiality of public office. Movement between the sectors is not something to be discouraged; rather it should be controlled both to manage immediate job transitions and to ensure that biases in public

decision-making do not arise. Skewed policies as a result of the revolving door can happen in two ways:

- There is a very real risk of unfair or undue advantage being granted by ministers or other public officials to an individual sector, industry or company in return for lucrative contracts or employment after they have left public service. For example, government officials may negotiate or anticipate getting new jobs with the private sector while still in office.
- The use of insider information, including personal and professional contacts, obtained in one's prior employment in the government may be exploited to create an unfair advantage for the industry or company when it comes to policy negotiations, public contracting and other interactions with public sector entities.

When undue influence is leveraged on behalf of a particular set of interests the decisions that ensue do not necessarily represent the public's best interest. They may even be detrimental to it.

The perception of government favouritism of special interests can equally raise mistrust and damage a country's reputation. Such suspicions of bias may reduce citizens' trust in government, which is generally when it comes to politicians, political parties, and civil servants.⁸ Perceptions of injustice may also hurt a country's economy by discouraging business from bidding for public contracts, investing in the country or participating in government-backed programmes.

Employment prior to entering public office

The movement from the private to public sector, also called the 'reverse revolving door', has raised concerns about its negative influence on policy decisions. On his first day in office, such concerns led the US president, Barack Obama, to issue an executive order forbidding all government employees from participating in any matter directly related to their former employer or clients for a period of two years from their date of appointment.⁹

In the US, one of the most publicised pre-employment cases dates to the 1990's and the Monsanto Corporation, the agricultural giant. In 1992, the US Food and Drug Administration (FDA) had a former Monsanto lawyer draft its policy on agricultural biotechnology, which came to serve as the basis for worldwide regulations. He joined the FDA at the time of the drafting of the law only to leave after a few years and later become Monsanto's vice-president.¹⁰

Employment after leaving public office

Many countries have prohibitions and restrictions to avoid conflicts of interest in post-public employment, often called 'switching sides'.¹¹ The majority of countries still lack adequate regulation, however. According to a study of rules and standards for public office holders in EU countries and institutions¹² approximately 50 per cent of conflict of interest issues were found to be

Regulating the revolving door

The Links between Government, Business and Lobbyists

Research conducted in the US shows that of the 3,000 financial reform lobbyists that are registered, more than 50 per cent have gone through Washington's revolving door.¹⁵ In the oil and gas sector, three out of every four industry lobbyists in the US previously have worked in Congress or the executive branch.¹⁶

This finding is similar across different countries, particularly in the case of the financial sector. A report on 30 OECD countries concluded that during the financial crisis, many lobbyists entered and exited through the revolving door connecting the lobbying world with government.¹⁷

Such integration between government and business can be good in terms of improving knowledge about each sector. The danger, however, is when one's past employment and contacts are misused for personal gain at the expense of the public's interest.

unregulated, and more importantly, the revolving door phenomenon was found to be least regulated.

The problem of closely working on issues in the private sector that used to be one's domain in the public sector extends across all countries. In India, the former chairman of the Securities and Exchange Board began serving the companies that he used to regulate once he 'retired' from public service.¹³ In South Africa, the former chief executive of the Gauteng Gambling Board left his position to become the director of a private gaming company he used to oversee.¹⁴ In South Africa, cases of public officials entering the private sector have become commonplace as the law does not impose a cooling-off period — a required time period of non-related employment upon leaving a former position.

A new development, not fully covered by existing revolving door legislation, is the trend of publicly-appointed and elected officials leaving government to work as lobbyists, shaping public policy but on behalf of private interests. Their insider access to government officials is valued by lobbying groups. Findings show that lobbyists who had previously worked in a US Senator's office see an average and immediate 21 per cent drop in revenue when this elected official leaves office. For lobbyists with past work experience in offices of US Representatives, the revenue decline averages 15 per cent (if their former employee was senior ranking member of Congress or a member of an important legislative committee).¹⁸ The use of past professional contacts turns into a corruption risk if these relationships are abused, creating unfair advantages and asymmetries in the process of designing public policies (see side bar).

3. What are the remedies?

Countries should seek to establish and enforce regulations that reduce opportunities for conflicts of interest, including measures that mandate the disclosure of personal assets and interests. Countries also should consider establishing a mandatory 'cooling-off' period in order to slow the revolving door phenomenon.

At the same time, there should be a balance between regulating conflicts of interest and maintaining mobility between the different sectors. An individual has the right to economic freedom and legislation must respect this fact and should encourage a dynamic local labour market. Also, laws to control the revolving door should be context and country relevant. Each country should take into consideration the channels through which the revolving door phenomenon more frequently occurs and previous barriers (e.g. economic, social, racial and/or ethnic) that may have restricted movement between sectors. In the case of South Africa years of racial discrimination have meant that many individuals currently working in government never had the opportunity to pursue jobs in the private sector. The challenge now is to encourage this opportunity while still setting out sufficient regulations.

Governments also should strengthen and enforce the existing regulatory framework to establish appropriate boundaries between public service and private interests. Regulation of the revolving door should include measures that prevent public officials from misusing specific information gained while in public service. The exercise of authority by public officials should also be monitored to ensure that it is not influenced by personal gain and/or expectation of future employment. These and similar regulatory actions would help to rebuild public trust and to re-enforce the integrity and impartiality of public service.

The majority of countries regulate post-employment issues through law. The greater use of codes should be encouraged as complementary measures, as has happened in Canada and which has been called for by the OECD.¹⁹ Codes help to complement laws by outlining a clear standard for expected action and conduct. Canada has issued the Conflict of Interest Act,²⁰ which provides general rules for avoiding conflicts of interest. It also includes post-employment guidelines that come into effect after public officials leave office. In addition, the Canadian government has established codes of conduct for its current employees and after they leave the public sector (see side bar).²¹

It is important that revolving door regulation is extended from post-employment issues to cover pre-employment concerns. There should be rules and procedures regarding matters such as the divestment of interests (such as stock or board positions held) upon joining the public service. Also, there should be measures to address mandatory recusal on matters directly involving former employers and clients for a defined period after taking office.

Coverage

The usual focus of revolving door regulation is on decision-makers, such as ministers and members of the legislature, as well as political advisors, senior public servants, chief executives and managers of state-owned enterprises. Studies show that the higher the prestige and the position of a public official, the more likely it will be that companies and organisations seek out the person as a contact in government.²⁴ Countries with an effective conflict of interest policy tend to have different systems to regulate different categories of public office holders (public authorities, government institutions, parliaments, central banks and audit agencies). The same bifurcated classifications would apply to revolving door regulations.

Cooling-off' periods

The most common response for dealing with post-employment conflicts is using rules that mandate 'cooling-off' periods. These measures determine a time period

Canada's Codes of Conduct for Public Officials

According to the Conflict of Interest and Post-Employment Code for Public Office Holders of 1994,²² Canadian ministers are not allowed to pass on information that is not accessible to the general public to any non-governmental or corporate interests for a period of five years after leaving their position. Sanctions in respect of any breach of the code can amount to a fine, damages or termination or reduction in a government pension.

Canadian public servants in executive positions are prohibited for one year after the end of their term from accepting appointments with entities which they personally, or through their subordinates, had a significant official relationship. They also are forbidden during that year from giving advice to their clients using insider information.

Keeping the Revolving Door Controlled in the US

The Departmental Ethics Office in the US²³ established restrictions on post-public employment. There are different statutory prohibitions on former government employees that generally prevent them from 'switching sides' after leaving the public service.

In addition, states may also implement revolving door regulation. For instance, 31 states in the US mandate a period of time that must elapse before a former legislator can represent clients before the legislature, or have a lifetime ban on using confidential information for the benefit of clients.

Regulating the revolving door

Australia's Cooling-Off Period for Hopeful Lobbyists

The Australian Lobbying Code of Conduct of 2008 establishes prohibitions on engaging in lobbying activities by former officials in the public service. Senior executives and equivalents have a one-year cooling-off period in which they are prohibited lobbying government representatives on any matters on which they have had official dealings as public servants over their last 12 months of employment.

Furthermore, former ministers and parliamentary secretaries are not allowed to engage in lobbying activities for an 18-month period after they leave office, and former ministerial staff cannot engage in lobbying activities for one year after they exit the public's service.

whereby a former public office holder or senior official is prohibited from undertaking tasks in the private sector that relate to his or her current regulatory or representative duties (see side bar).

Recently, countries have also adopted similar rules regarding employees that come from the private sector to work in the public sector. The type of restriction and the length of time limits imposed on the activities should be proportionate to the threat imposed from their role as a public official.

Countries such as Ireland and Poland have introduced a one-year policy, while the United Kingdom, Japan, and the Netherlands have a two-year policy.²⁵ In response to the debate spurred by several ex-EU Commissioners taking up lucrative jobs in the private sector, TI has recommended a cooling-off period of at least two years to mitigate the risk of potential conflicts of interests.²⁶ Nevertheless, in areas where one cannot foresee the duration of the threat (i.e. the use of insider information) imposing one minimum time limit is not the best option. Restrictions should consider the life-span of the topic and last until the issue is finished or made public.


Oversight and enforcement mechanisms

As with any regulatory framework, enforceability remains a serious challenge for controlling the revolving door. Conflicts of interests posed by the revolving door have proved difficult to remedy even when countries have laws on paper. For example, breakdowns in applying the US regulations have sparked calls for significant policy reforms, such as to extend the cooling-off period to the entire federal term and expanding the scope of prohibited activities.

One key challenge for enforceability is how a government can effectively monitor the movements of former public officials. The Public Service Commission in South Africa has suggested that this should rest with the private sector and be ex-ante. It has recommended that provisions be put in contracts between government and business to legally prevent a company from recruiting public officials with whom they work.

In the UK, former ministers must seek the advice of an Advisory Committee on Business Appointments about any positions they wish to take up within two years of retirement.²⁷ The Committee analyses the details of the appointment, the contacts the former minister had with her or his future employer (or with competitors) and the extent to which the former minister may be receiving a reward for past favours. Similar bodies exist that are to be consulted by former public servants who seek employment with the private sector in France (up to three years after retiring) and Ireland (up to one year after leaving office).

In the case of the European Union, the European Commission and the European Investment Bank have established ad hoc committees that should be consulted concerning post-employment issues. According to the Code of Conduct for Commissioners, those wishing to 'engage in an occupation during the year after they have ceased to hold office shall inform the Commission in good time.' The ad hoc Ethical Committee analyses whether the new position is in accordance with the 'duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.'³⁰ There is plenty of criticism that provisions are too vague and they are not effectively preventing conflicts of interest, however, particularly as the Code of Conduct does not impose any sanction in case of noncompliance.

What all of these measures — from addressing who is covered by the laws and the duration of cooling-off periods, to the creation of oversight bodies and the use of enforcement mechanisms — hope to achieve is the delicate balance between an individual's and the public's interests. It is not about stopping the revolving door, but rather effectively regulating it. 

Brazil Reins in Post-Public Employment

In Brazil, after a series of scandals involving the movement of public officials to the private sector,²⁸ the country established a legal framework²⁹ and a code of conduct for senior government officials in the executive branch.

The code sets limitations on professional activities undertaken after leaving public office. A cooling-off period of four months is imposed, and the Commission on Public Ethics (CEP) is tasked with analysing whether a former employee's new appointment creates a conflict of interest.

As opposed to other countries, former officials are entitled to compensation, equivalent to the salary of the position they occupied before, during the cooling-off phase.

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For more information about this working paper and others in the series, please contact Craig Fagan at the TI Secretariat: plres@transparency.org

**TRANSPARENCY
INTERNATIONAL**

Telephone

+49-30-343820 -0

Fax

+49-30-347039 -12

International Secretariat

Alt-Moabit 96

10559 Berlin

Germany

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- ⁶ Post public employment: the use of someone's current public office for private gain — making a biased decision to benefit a prospective employer; or the wrongful exploitation of someone's previous public office — through the use of previous specific knowledge (insider information).
- ⁷ Pre-employment can take two different forms: (i) Secondments: private sector or lobbyists are seconded into government or regulatory agencies for a period while remaining employees in the private or non-profit sector; (ii) Political appointments: business personnel being appointed as government ministers or as directors of agencies.
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