



ASSET DECLARATIONS: AN EFFECTIVE TOOL TO FIGHT CORRUPTION?

Public sector officials who have achieved positions of power and managerial control over government budgets and spending can be particularly vulnerable to corruption.

Asset declarations offer a critical tool to public officials and those they serve in the prevention, detection, investigation and sanctioning of corruption.

Public sector officials with power are those who have been vested with the authority to decide contracts, allocate budgets and oversee a variety of decisions that involve taxpayer money. Transparency, accountability and integrity are essential in the execution of their authority. They must demonstrate in the way they fulfil their tasks that they are acting for the public good and not for personal gain.

To ensure probity, asset declarations are intended to provide a clear format for public officials to report assets and interests. Asset disclosure requirements tend to cover the leadership of the three branches of government — executive, legislative and judiciary — as well as senior level officials who are part of government civil service.

Asset declarations can play an important role in shining a light on a public official's interests. Asset declarations can detect abuse of power and its transformation into unexplained wealth, and can therefore be a tool for uncovering bribery and other forms of corruption such as nepotism, conflicts of interest and undue advantage.

Despite efforts toward developing shared principles, there is still no international standard or agreement on the breadth and depth of asset declarations. This paper is an attempt to advance efforts to achieve a common and comparable level of asset disclosure among all countries, drawing on examples of asset disclosure currently in practice.

THE ISSUE

ASSET DECLARATIONS: WHO AND WHAT?

Declarations of assets, liabilities and other interests owned or controlled by public officials, their families and close associates have become a key tool in combating corruption around the globe (see side bar). Asset declarations are increasingly required of certain categories of public officials. In some cases, such officials are identified as “politically exposed persons” or “PEPs”, and some countries have gone so far as to build PEP lists.

Asset declarations serve to prevent, detect, investigate and prosecute corruption.¹ Such declarations make it easier to identify potential cases of illicit enrichment, contribute to anti-money laundering and asset recovery efforts, help manage conflicts of interest and can provide evidence of illicit flows.²

By requiring that those holding office divulge their assets and interests before, during and upon leaving their tenure, any enrichment during that period can be monitored. By scrutinising the accumulation of assets during and after terms in office, investigators are provided a motive for asking public officials to explain these changes in one’s wealth.

Although asset declarations have been utilised since the 1970s, they acquired renewed international focus since the passage of the UN Convention against Corruption (UNCAC), which was adopted by the UN General Assembly in 2003. The convention’s articles specifically require countries to adopt legislation for public officials to declare their assets.³ One of the real strengths of UNCAC has been this specific focus on asset declarations, which along with the articles on international cooperation, have created a genuine basis for countries to take action on identifying, tracking and recovering assets.

It is important that the asset declaration regime applies to both national- and sub-national-level officials, especially in federal states where local authorities exercise a high-degree of discretion.

Further, asset declaration regimes should include all individuals who can exercise discretion over public funds as well as those actors connected to such decision makers.

At a minimum, asset declaration requirements should cover all individuals who hold (or who have held) senior public office as well as their close family members and associates. These include:

- Senior executive office holders: ministers, deputy ministers, commissioners, agency heads;
- Legislators;
- Judges at all court levels, senior prosecutors, and senior judiciary officials; and
- Civil servants (junior and senior level) who exercise budgetary discretion or authority (direct and indirect).

While this is the ideal level of disclosure, requirements for asset disclosure by such a comprehensive group of officials varies in practice by country. A World Bank survey of 176 jurisdictions shows that 78 per cent have financial disclosure systems for public officials. Of these, 93 per cent require disclosure for cabinet members, 91 per cent for Members of Parliament and 62 per cent for high-ranking prosecutors.⁴

WHAT TO DECLARE

The scope of reporting includes all immovable assets wherever they may be held, such as one’s personal residence and secondary or vacation properties that are used by or available to the official and his or her family.

Declarations also include moveable objects such as vehicles, jewellery and fine art; financial assets such as bank accounts (both domestic and foreign), stocks, and bonds; and all other sources of wealth or expenditures (such as educational scholarships for one’s children or paying tuition for their education abroad).

To the extent asset declaration regimes target conflicts of interest, the scope also includes outside employment, memberships and ownership in commercial enterprises.

Liabilities are included in reporting given that they can be prone to abuse. Low interest rates or other attractive off-market terms and conditions for loans can be used to influence the behaviour of a public official. Sometimes called ‘sweetheart’ loans, these loans are no less a form of corruption for a public official than receiving a bribe.

It is preferable to declare the broadest scope of relevant information, although a fully comprehensive disclosure must also balance operational realities with transparency objectives.

KEY FEATURES

A strong legal framework is critical for an effective asset declaration regime. The laws that require public officials to disclose details of their assets and liabilities should be robust and comprehensive. The law should clearly include who is covered and what to declare. It should also minimise loopholes that limit disclosures while at the same time protecting the privacy of third parties. Other issues to consider include:

- **Intended purpose of the declaration.** Whether for identification of interests, illicit enrichment or a combination of both, the intended use should be clear and should inform the design. Ideally, declarations should cover assets, liabilities and interests.
- **Frequency of disclosures.** In order to provide a baseline, declarations shall be made at the start of holding public office, updated annually and continued after the termination of office until the “cooling off period” finishes.
- **Independent and competent oversight.** Monitoring can help to ensure a high compliance rate and good quality level of reporting by public officials. For this reason the oversight agency for asset declarations must have legal guarantees of independence and a clearly defined mandate. Verification can be done by cross-checking against other verifiable data, physically verifying through investigation, or looking for incompatibilities in interest disclosures.
- **Public availability.** Public availability of asset information both deters officials from intentionally filing false declarations and encourages corrections for unintentional mistakes. Moreover, it strengthens and facilitates citizens’ involvement in reviewing the declarations. In some countries up to 80 per cent of all declaration forms contain critical errors⁵.

THE CHALLENGES

The filing of an asset declaration form is only the first step. Effective implementation of an asset declaration regime requires striking the right balance between having a comprehensive programme and other factors: administration, compliance, coverage, resources, transparency and political support.

Administration

It is not sufficient to file asset declarations without an oversight body reviewing the completeness and accuracy of the asset declaration form. Such a review can identify errors or omissions, contribute to the integrity of and confidence in the system, and flag individual disclosures that require greater scrutiny.

Compliance

Different sanctions can be imposed on civil servants for failing to comply, including withholding of salary, monetary fines, denial of benefits or more severe penalties. These disciplinary measures can be created on a sliding scale in accordance with the degree of non-compliance. Incentives also can be used to promote compliance, such as publishing lists of individuals in full compliance or awarding certificates of completion.

ASSET DECLARATIONS: A DOOR TO FORFEITURE?

While asset declarations are a good starting point, additional provisions should be made in the case of what to do when a problem is found.

Asset seizure and/or confiscation via non-conviction-based asset forfeiture is a complicated and delicate issue in any jurisdiction.

However, it is one of the tools established by the UNCAC and countries are charged with creating the corresponding legislation. Also, the recovery of assets demands a technical process that may involve requesting other state parties for assistance.

As a result, it requires a level of technical resources, expertise and enabling legislation in order to freeze, seize and manage illicit assets.

Graduated coverage

To avoid burdening the system, a risk-based approach could be adopted for extending more rigorous disclosure requirements. More stringent, enhanced asset declaration standards could apply to those in more senior and/or higher risk positions. This approach could also be used when facts and circumstances require it, such as when credible allegations of bribery or corruption emerge.

Resources

For a regime to work, it requires an efficient, well-resourced and fully staffed oversight agency. The agency should have sufficient investigative powers in order to effectively carry out its mandate. It also must be able to access relevant databases and employ reliable methods to collect information. The agency needs to be independent from other state powers in terms of both legal guarantees and budget. One option could be to have a country's anti-corruption agency also be responsible for the collection and oversight of asset declarations. This is the case of Indonesia, whose Corruption Eradication Commission (KPK) gets its powers to receive and monitor declarations under existing laws.⁶

Transparency

Each jurisdiction needs to clearly identify how declarations will be published and be accessed by the public once they are initially published. According to a survey of 137 countries that have financial asset disclosures for public officials, only 43 per cent provide the public with access to them.⁷

Political support

Garnering political backing for the use of asset disclosure regimes is a significant obstacle. Few politically exposed persons will be eager to have their finances and interests made public. This could happen through passive non- or casual compliance or through more active measures such as trying to limit the responsible agency to fulfil its mandate.

RECOMMENDATIONS

Adhering to an effective asset declaration system is part of the transparency, accountability and integrity obligations of public officials. Developing such a system should help to detect illicit enrichment and to reduce conflicts of interest. It should also include, at a minimum, the following elements:

SCOPE

- Asset disclosures needs to capture elements that could potentially influence or corrupt public officials: assets, liabilities, income from all sources, gifts and potential conflicts of interests.

COVERAGE

- Coverage should extend to all public officials, national and sub-national, who exercise discretion over public funds and/or legislative decisions. Where needed, this coverage could be extended in a progressive manner.
- Coverage should include all individuals closely connected with PEPs: spouses, domestic partners, children, other household members⁸ and close associates.

GEORGIA: A MODEL FOR DISCLOSURE?

Georgia has a very good system when it comes to coverage, depth of the declarations and online publication of public officials' assets and interests.

The Civil Service Bureau is the agency tasked with managing and monitoring the system which has been in place since 2010. Copies of all the disclosures are published online (<https://declaration.gov.ge/eng/>). The site contains 60,000 declarations for nearly 3,000 senior public officials and is available in English and Georgian.

Declarations cover the individual and family members and require the reporting of real estate, movable property, securities, bank accounts (including loans), cash-on-hand, other forms of employment, contracts and gifts. The platform won the UN Public Service Award in 2013 for "preventing and combating corruption in public service".

SUBMISSION OF DECLARATIONS

- Asset declarations must be made when a person first assumes his or her position.
- Regular, periodic updates of asset declarations, at a minimum annually, must be made, to check whether there has been a change to the declaration.
- Mandatory reporting must continue after the individual leaves her/his role, to capture deferred enrichment.
- Sanctions must be put in place for those failing to comply. Sanctions should include criminal prosecution for egregious and deliberate errors or omissions.

VERIFICATION

- An oversight agency should be established in law to verify the accuracy of information in declarations, including through cross-checking data and physical verification.
- Randomised and/or risk-based methods may be used by oversight agencies to prioritise declarations to review,

PUBLICATION

- Guidelines are needed to promote public access to asset declarations, but should also include limited exemptions for non-publication or exclusions.
- Publication of asset declarations should be aligned with access to information or government disclosure policies, which often use 30 days as the standard for public disclosure.
- Asset declarations should be available online and in a machine-readable format to ensure timely access and the use of extractable data by third parties (i.e. civil society, media, etc.).
- The most senior public officials should adopt a proactive approach of full disclosure, to allow for easy public access as part of their public accountability.

NOTES

¹ The Organisation for Economic Co-operation and Development (OECD) outlines three key functions of an asset disclosure regime: conflict of interest control, transparency and public accountability and verification of the legitimacy of income and wealth.

² Ruxandra Burdescu, Gary J. Reid, Stuart Gilman, and Stephanie Trapnell, "Income and asset declarations: tools and trade-offs" (Washington, DC: Stolen Asset Recovery (StAR)/World Bank, 2009).

³ See: Articles 8 (section 5) and 52 (section 5). www.unodc.org/unodc/en/treaties/CAC/.

⁴ Ivana Rossi, Laura Pop, Francesco Clementucci and Lina Sawaqed, "Using Asset Disclosure for Identifying Politically Exposed Persons" (Washington, DC: World Bank, 2012).
http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Using_AD_for_PEP_id_identification.pdf.

⁵ Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, "Disclosure by Politicians", *American Economic Journal: Applied Econometrics* 2 (April 2010): 179-209.

⁶ See laws 30/2002 and 28/1999.

⁷ World Bank Group, "Income and asset disclosure requirements for heads of state and governments" (Washington, DC: World Bank, 2006).
www.right2info.org/resources/publications/publications/messick_income-and-asset-disclosure-requirements_wb-2006.

⁸ There is no internationally-agreed definition of household composition in statistical standards.

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