



WORKING PAPER

ASSEMBLY — 41ST SESSION

LEGAL COMMISSION

Agenda Item 43: Other issues to be considered by the Legal Commission

CONSIDERATION OF CONFLICTS OF INTEREST

(Presented by the Dominican Republic with the support of Argentina, Costa Rica and Panama)

EXECUTIVE SUMMARY

This Working Paper presents an outline of the measures that the Dominican Republic has taken and the legal instruments incorporated into domestic legislation aimed at preventing conflicts of interest in the management of civil aviation, an essential means of impartially and effectively regulating civil aviation safety and security. It also informs the Assembly of State reforms implemented at the organizational level in order to regulate and control conflicts of interest that may arise in the exercise of public office, in line with ICAO initiatives aimed at promoting the implementation of State public policies to prevent conflicts of interest in the civil aviation regulator.

Action: The Assembly is invited to take note of the information contained herein on the progress made by the Dominican Republic in enacting, in its domestic legislation, provisions aimed at preventing conflicts of interest, and requests that ICAO continue to promote among its Member States the adoption of regulations that contribute to preventing conflicts of interest in civil aviation.

<i>Strategic Objectives:</i>	This working paper relates to all the Strategic Objectives of ICAO.
<i>Financial implications:</i>	Resources provided under the Regular Budget.
<i>References:</i>	A39-WP/12 A37-WP/80 State letter LE 4/69-14/40 United Nations Convention against Corruption, 2003 (UNCAC) Annex 19 - <i>Safety Management</i>

¹ Spanish version provided by Dominican Republic.

1. BACKGROUND

1.1 The International Civil Aviation Organization (ICAO) has lent great importance to the topic of conflicts of interest in aviation and how to detect, prevent, mitigate and manage such conflicts, with a view to ensuring transparency and accountability. At the 37th Session of the ICAO Assembly (Montréal, 28 September – 8 October 2010), the topic “*Consideration of guidance on conflicts of interest*” was added to the work programme of the Legal Committee and a decision was subsequently approved by the Legal Committee, the Council and the 38th Session of the Assembly (24 September – 4 October 2013) to raise its priority.

1.2 Subsequently, at the 39th Session of the Assembly (27 September – 6 October 2016), the Legal Commission heard proposals from various States through working papers, and in Resolution A39-8 on Conflicts of Interest in civil aviation, it was recognized that “*conflicts of interest may hamper effective, independent and impartial safety regulation of civil aviation and thereby pose risks to the safety and security of international civil aviation*”. States were invited to examine at the national level the adequacy of their domestic legal regimes on measures and practices on conflicts of interest in civil aviation with a view to balancing their particular circumstances and ability to fulfil their oversight obligations with addressing the risks posed by conflicts of interest, and where necessary, to enact legislation and establish systems, codes and practices which promote the awareness of potential conflicts of interest in civil aviation.

1.3 During its consideration of the topics discussed at the 38th session of the Legal Committee (Virtual, 22 – 25 March 2022), under item 2.5, the topic of Conflicts of Interest was placed on the agenda.

2. ANALYSIS

2.1 The United Nations Convention against Corruption, adopted by the General Assembly on 31 October 2003, provides that States shall endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest; there is also recognition of the need for and benefits derived from the specialized experience and knowledge of qualified personnel from the industry in helping to provide important regulatory oversight functions.

2.2 Under the United Nations Convention against Corruption, States have the obligation to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

2.3 Further, Assembly Resolution A39-8 urges States to enact legislation and establish systems, codes and practices, which promote the awareness of potential conflicts of interest in civil aviation and ensure the enforcement of rules and measures to detect, avoid, mitigate and manage conflicts of interest relating to safety oversight in civil aviation.

2.4 Moreover, Annex 19 on Safety Management and related ICAO guidance identifies the need for States to, among other things, establish a strategy to mitigate potential issues that may arise from conflicts of interest in civil aviation.

2.5 It is also important to note that at the 39th Session of the Assembly, some States stipulated that, based on the survey carried out by the ICAO Secretariat, the conclusion has been reached that it would be useful for all States to have a framework to deal with conflicts of interest in civil aviation, given the prevalence of these situations in States’ civil aviation activities.

3. DISCUSSION

3.1 The Dominican Republic, following a national review of the adequacy of its domestic legal regimes on measures and practices to detect, avoid, mitigate and manage conflicts of interest in civil aviation, with a view to ensuring and improving transparency and accountability in civil aviation regulatory activities and to balancing its particular circumstances and ability to fulfil its oversight obligations with addressing the risks to aviation safety and security posed by conflicts of interest, has incorporated in its domestic legislation various legal instruments for the aforementioned purposes.

3.2 Act No. 491-06 on Civil Aviation, which establishes the Dominican Institute of Civil Aviation (IDAC) and puts it in charge of oversight and monitoring of civil aviation in the Dominican Republic, provides that the Director and Deputy Director of IDAC shall have management and technical experience with degrees, certificates or licenses accrediting their qualifications in an area directly related to civil aviation, and that these officials may not own any shares or have any economic or financial interest or paid secondary employment with any aeronautical company and may not engage in any other business, occupation or employment related to aeronautical activities.

3.3 Article 135 of the Constitution of the Dominican Republic provides that ministers and deputy ministers may not engage in any professional or business activity that may result in a conflict of interest. Moreover, Article 80 of Act No. 41-08 on Public Office provides that public servants are prohibited from participating in official activities in areas in which the public servant has private economic, property or political interests that raise any conflicts of interest;

3.4 In addition, Article 3.11 of Act No. 107-13 on administrative procedures provides that personnel serving in the Public Administration shall refrain from any arbitrary action or action that results in preferential treatment for any reason and shall act on the basis of objective service in the public interest, and the participation of said personnel in any matter in which he or she himself, or close friends or relatives, have any type of interest or in which there may be a conflict of interest is prohibited.

3.5 Similarly, Act No. 340-06 on Procurement and Government Contracts for Goods, Services, Works and Concessions, amended, sets out a series of prohibitions against government officials being involved in government contracting for goods or services, including consulting services, in areas in which the said officials participate as regulators.

3.6 All of the regulations mentioned above prohibit involvement in activities that raise a conflict of interest. However, in order to prevent potential situations of conflict of interest from arising in government service, since August 2012 the Dominican Republic has had a Directorate General for Ethics and Governmental Integrity (DIGEIG), established by Decree No. 486-12 of 21 August 2012. This entity is the regulating organ in matters of ethics, transparency, open government, anti-corruption, conflicts of interest and free access to information in the area of government administration. This organ was established with a mandate to ensure compliance with international conventions to which we are a signatory, true to the spirit of the 2010 Constitution, which required a thoroughgoing review and modernization of the organization of the State.

3.7 The DIGEIG has established the Commission for Governmental Integrity and Regulatory Compliance (CIGCN). This is a plural organ of public servants comprising representatives from all occupational groups in the Public Administration whose objective is to promote the institutionalization of ethics and encourage integrity in the work of public servants, oversee compliance with the Code of Ethics and Conduct of Public Servants and act as a working body to standardize programmes and policies on regulatory compliance, risk prevention, anti-bribery and the management of tools for governmental

integrity in order to prevent acts of corruption and conflicts of interest in the Public Administration, in the interests of ensuring the principle of good government, good administration and access to public information.

3.8 The Dominican Republic, pursuant to its Constitution and legislation, has provided for a number of alternatives to handle conflicts of interest, including prohibition, which involves voluntary or mandatory abstention from participating in matters in which the individual has a private interest or the separation of interests and management measures, or management arrangements in which the existence of a conflict of interest requires that the public servant is moved out of the position or extricates themselves from the private interest. Public servants may also make a prior declaration or identify a declaration they have made in which they disclose in advance family, professional, economic, commercial, union, sports, social or religious relationships so that conflicts can be managed through measures that prevent them from coming into play or prevent the appearance of bias affecting objectivity and independence in decision making to the detriment of the public interest.

4. **CONCLUSION**

4.1 The exercise of public office is an activity in which dignity, honesty, transparency, impartiality and a clear commitment to the public interest must be paramount, and therefore it is necessary to preserve the integrity of public servants by preventing and managing conflicts of interest in order to maintain public confidence and reduce the risks of administrative corruption in all areas. For that reason, it has been a national priority, particularly in matters of aviation, to seek to counteract such risks, considering that some situations of conflict of interest may arise from revolving doors, financial interests, secondments of staff, regulatory capture, combined regulator-operators and state-owned property.

4.2 For that reason, it is in our interests to invite the Legal Commission to consider this working paper and to request that the Assembly include among its resolutions on legal matters at the 41st Session of the Assembly a resolution calling on States to adopt provisions on conflicts of interest in their domestic legislation on aviation matters.

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