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Foreign exchange controls and assets declarations for politicians and public officials

Query

Which countries have restrictions on public officials, politicians or any nationals from holding overseas bank accounts or property. Which countries require officials and politicians to declare their financial and property interests (particularly their overseas interests); and in both areas, which countries enforce these restrictions?

Purpose

The background to the question is how intelligence and tracking of suspicious activity and money laundering can be improved. Knowing which countries have legal restrictions, would be very useful. Although my primary interest is developing countries, it would also be of interest to know which developed countries have these systems in place.

Content

Caveat

There is no publicly accessible exhaustive list of countries who have restrictions on public officials, politicians or any nationals from holding overseas bank accounts or property. In agreement with the enquirer, this answer provides (non exhaustive) examples of countries that have such provisions.

Summary

A few countries such as Venezuela, Nigeria, Kenya and Bangladesh restrict or prohibit politicians or public officials from establishing and holding overseas bank accounts as a way to prevent corruption and money laundering. Typically, such restrictions are not specific to politicians, but imposed on citizens as part of a country's foreign exchange control regime. Restrictions can include disclosure requirements, strict prohibition or the written authorisation of the central bank or the taxing authority to open and maintain overseas accounts. As the number of countries where strict exchange controls are in force is constantly changing, there is no up-to-date, publicly available and exhaustive list of countries enforcing strict exchange control regimes. Countries such as Argentina, Brazil, China, India, Malaysia, Morocco, Nigeria, and Venezuela still exercise some kind of foreign exchange controls.

There is no publicly accessible documented account of how these various countries enforce these restrictions and more research/resources would need to be allocated to find out how these regulations are being implemented in practice.

Many countries across the world also require public officials to declare their wealth either upon entry into the

Author(s): Marie Chêne, Transparency International, mchene@transparency.org
Reviewed by: Robin Hodess Ph.D, Transparency International, rhodess@transparency.org

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public service or for a promotion into a position with potential for illicit enrichment. Disclosure requirements typically cover real estate, movable assets, and cash as well as earned and unearned (investment) income, without explicitly distinguishing between assets hold within the country or abroad. Level of enforcement greatly varies from country to country, depending on the quality of the regulatory framework, the enforcement structure and level of resources (manpower, technical and financial) allocated to implement such schemes.

In addition to foreign ownership restrictions and asset disclosure systems, some countries such as the U.S., Korea, and Thailand have instituted blind trust systems as a preventive measure for conflict of interest of politicians or high ranking civil servants, whereby the executors of such trusts have full discretion over the assets, and the trust beneficiaries have no knowledge of the holdings of the trust.

1 Examples of countries who restrict their citizens or politicians from holding overseas bank accounts or property

Restricting or prohibiting the use of overseas bank accounts as an anti-corruption/anti-money laundering tool

Example of countries imposing such restrictions

There are a few examples of countries in the world which restrict or prohibit specifically politicians or public officials from establishing and holding overseas bank accounts as a way to prevent corruption and money laundering.

In **Venezuela** for example, the Anti-corruption law 2003 includes a prohibition on officials holding secret foreign bank accounts (Business Anti-corruption profile, 2011). In **Nigeria**, the 1990 Act establishing the "Code of Conduct Bureau" – body in charge of maintaining high standards of morality and accountability in the conduct of government business – forbids public officers covered by the Act to maintain or operate a bank account in any country outside Nigeria (Code of Conduct Bureau, 1990). In **Kenya**, the Article 76 of the 2010 Constitution prohibits State officers from maintaining bank accounts outside the country, but there are concerns that this provision is being largely ignored (Ally Jamah, 2011). In **Bangladesh**, overseas accounts cannot be held by public officials, politicians or any nationals unless one has a legitimate source of income in the host country. Generally the overseas account holder cannot transfer any amount of money to that foreign account from his/her earnings in Bangladesh. Such transfer is illegal and treated as money laundering under the Money Laundering Prevention Act 2009. In special circumstances subject to approval of the Central Bank limited amount of money can be transferred to a foreign country (such causes as emergency medical treatment or education).

Enforcement

However, there is no publicly accessible documented account of how these various countries enforce these restrictions and more research/resources would need to be allocated to find out how these regulations are being implemented in practice and what their impact is on preventing money laundering or curbing corruption. A first step is this direction could be to create and maintain a database of countries imposing such restrictions on their public officials, held by, for example, the World Bank (StAR) or the Financial Action Task Force (FATF).

Foreign exchange control regimes

In general terms, restrictions relating to opening and holding foreign accounts and property are imposed on citizens as part of a country's foreign exchange control regime. These restrictions are usually motivated by economic rather than anti-corruption concerns, as a way to maintain a favourable balance of payment. In general, such restrictions are not specific to politicians, but apply to all residents of a given country.

In some countries, while there are no restrictions preventing citizens from opening foreign bank accounts, assets held overseas beyond a certain value must be declared to the Central Bank or the tax authorities. In the US for example, individuals are generally required to file an annual information statement with the U.S. Internal Revenue Service (IRS) disclosing any beneficial interest in, or signatory authority over, bank or other financial accounts located outside the U.S (Gerken, G., 2010). Assets of more than $ 10,000 in a foreign account must be declared to the IRS on an annual income tax return.

Countries with stricter control systems usually require the written authorisation of the central bank or a tax authority for their resident to open or maintain financial accounts in foreign jurisdictions. The central bank may also impose conditions on such holdings.

However, with globalisation and economic liberalisation, the overall trend worldwide is to relax such exchange control regimes and countries which still impose exchange controls tend to be the exception rather than the rule. As the number of countries where strict exchange controls are in force is constantly changing, there is no up-to-date, publicly available and exhaustive list of countries enforcing strict exchange control regimes. Countries such as Argentina, Brazil, China, India, Malaysia, Morocco (although gradually liberalised), Nigeria, and Venezuela still exercise some kind of foreign exchange controls.

The **Brazilian government** for example used to maintain fairly strict exchange controls requiring the Central Bank authorisation for foreign exchange transactions through an elaborate reporting and monitoring system but this is rapidly changing. In a 2008 update to existing legislation, Brazilian individuals and legal entities are now allowed to purchase and sell foreign currency and transfer money abroad without limits, although they may be asked to justify the legality and economic reasons for the transfers. All transfers have to be reported to the central bank for record-keeping purposes. Individuals are also allowed to transfer funds from Brazil to invest in companies abroad and invest in international financial markets without limits. Brazilian individuals and companies with assets or investments abroad valued at more than US$100,000 at year-end to declare them to the central bank by May of the following year. Failure to report and misreporting can be sanctioned by fines (The Economist Intelligence Unit, 2010).

In **India,** foreign exchange regulations prohibit any person resident in India to open or maintain an account in foreign currency abroad without prior approval of Reserve Bank of India. Only under certain circumstances, the Reserve Bank can grant general permission to persons in or resident in India to maintain and operate on foreign currency accounts abroad.

Similarly, no Indian residents are allowed to acquire, hold, transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise, any immovable property situate outside India, except with the general or special permission of Reserve Bank, (Reserve Bank of India, No date).

Argentina has reinstated foreign exchange controls in 2001, with numerous restrictions and requirements on foreign exchange trades and cross border transfers. In terms of investments outside Argentina, residents may purchase foreign currency for investment purposes up to US$ 2,000,000 per calendar month. Among others, the concept of investment covers real estate investments made abroad, portfolio investments (including bank deposits, and purchases of shares, bonds or other financial investments made abroad), loans granted to non-Argentine residents and other investments made abroad by Argentine residents. In addition to being subject to that maximum amount limit, the right of Argentine residents to acquire foreign assets through “investments” requires additionally that they do not have debts of any kind due and unpaid to foreign creditors and their compliance with the information regime required under foreign exchange regulations (Marval, O'Farrell & Mairal, 2010). In 2010, Argentina tightened its foreign-exchange rules further, allegedly to limit money laundering and tax evasion. In addition to the above mentioned restrictions, the government now requires people or companies who buy more than 250,000 USD of foreign currencies per year to provide proof of their income. Any monthly purchases of foreign currencies over 20,000 USD also has to be conducted by check or wire transfer, rather than cash (Mercopress, 2010).

Conflicts of interest and blind trusts

In addition to foreign ownership restrictions and asset disclosure systems some countries such as the U.S., Korea, and Thailand have instituted blind trust systems as a preventive measure for conflict of interest involving politicians or high ranking civil servants. A blind trust is a trust in which the executors or those who have been given power of attorney have full discretion over the assets, and the trust beneficiaries have no knowledge of the holdings of the trust. Since the administrator would not be at liberty to discuss the management of any assets within the blind trust with the owner, there is no chance of being able to make use of the assets in order to secure additional properties or other profits.

The arrangement ensures that the politician will not be able to engage in acquiring personal gain as a result of his or her position, and eliminates speculation about any conflicts of interest. Yet, by their very nature, there are transparency and accountability concerns associated with the management of blind trusts.

In **Korea** for example, in addition to asset registration and disclosure some public officials are subject to the blind trust system which has been in place since 2006. According to this system high ranking officials from up to Grade 4 who work at the Ministry of Finance and Economy or other financial authorities and own stocks worth 30 million won (US$30,000) or more are required to either sell their stocks or put them in bank trust accounts (Gae Ok Park, 2008).

In **Thailand,** the Constitution as well as the Law on Minister's Investments, stipulates that politicians holding over 5% in any company must transfer the excess portion to a blind trust while in office. According to the National Anti-Corruption Commission, only 10% of politicians have used blind trust to manage their stock investments (Bangkok Post Business, 2009).

The Helpdesk has not identified reports or studies documenting the impact of blind trusts on preventing corruption and conflicts of interest within the time frame of this query.

2 International experience of assets declaration regimes

Mapping of asset disclosure regimes

Effective asset declaration regimes can play an important role in detecting illicit enrichment and preventing corruption. When adequately enforced and monitored, such schemes can provide valuable information to help detect corruption by generating baseline information against which later disclosure can be compared to uncover potential illicit enrichment. Findings from a comparative analysis of asset disclosure laws in 16 countries do suggest that countries where wealth disclosure is combined with content verification and public access to declarations are significantly associated with lower perceived levels of corruption (Ranjana Mukherjee and Omer Gokcekus, 2006).

Many countries require public officials to declare their wealth either upon entry into the public service or promotion into a position with potential for illicit enrichment. A 2006 survey of 148 World Bank client countries found that 101 countries require disclosure of income and assets by public officials. Of these countries, only 31 request the publication of the declarations including Indonesia, the Philippines, Russia, Albania, Georgia, Brazil, Argentina, Liberia and South Africa. Countries such as Malaysia, Colombia, Mexico, India, Bangladesh, Pakistan, Cameroon and Nigeria do not require public disclosure. 46 countries do not have asset disclosure regimes, including China, Myanmar, Angola, Gabon, Zimbabwe, Sierra Leone, Tajikistan, etc (World Bank Group, 2006). (The number of countries with asset declaration legislation may have increased since this mapping exercise was conducted in 2006).

The World Bank also compiled asset declaration laws from 18 countries, each law mapped along common dimensions including coverage, declaration content, filling frequency and method, declaration processing, sanctions for breach and public access to declarations (**World Bank website**). The scope, coverage, and contents of assets declaration vary from country to country as assets declaration schemes are tailored according to the country's social, historical and political circumstances and resources for enforcing the law. A few principles emerge: credible asset declaration regimes need to clearly define who should declare what to whom, at which frequency, establish a review mechanism with explicit criteria for verification, and provide for public access to these declarations (although striking the right balance between public disclosure and protection of privacy remains a subject of debate) as well as applicable sanctions for failure to declare.

More recently, the Stolen Asset Recovery (StAR) Initiative conducted in-depth case studies of asset declaration schemes in eight countries (Mongolia, Kirgizstan, Croatia, USA, Argentina, Hong Kong, Guatemala and Macau) as well as a review of the legislation framework in 74 countries, including high income countries such as France, Germany, Italy, Japan, Norway, USA, and the UK (Burdescu R, et al, 2009).

Within this sample of countries, approximately 60-70% of low income countries versus 70-100% of high income countries have a legal framework requiring public officials to declare their assets. Most of countries with asset declaration frameworks cover heads of state, ministers, MPs and civil servants. Most regimes require a declaration of assets, income and liabilities. Requiring disclosure of the source of assets in addition to the value can be of great importance to prevent conflict of interest or detect illicit enrichment. Within the sample, the majority of countries with asset disclosure regimes require the disclosure of real estate, movable assets, cash as well as earned and unearned (investment) income. The literature does not explicitly distinguish between assets held within the country or abroad.

A 2011 OECD study also provides a systematic analysis of the existing practice in the area of asset declarations along the same lines in Eastern Europe and Central Asia, and in some OECD member states in Western Europe and North America including four case studies covering Lithuania, Romania, Spain and Ukraine, and many additional country examples and references (OECD, 2011).

Asset declaration schemes in practice

While asset declaration regimes have a great potential in building integrity in the public sector, their impact can be hampered in practice by shortcomings of the regulatory framework, and lack of resources (manpower, technical and financial) allocated to implement the schemes, especially with regard to the verification of the declarations (Chêne, M., 2008). Major flaws in legislation that are likely to threaten the effectiveness of asset disclosure as a tool against corruption include:

- The lack of clarity about what assets, liabilities and interests public officials are to disclose;
- The absence of a legal requirement for the verification of asset declarations;
- The lack of effective sanctions and clarity over the prosecution of offences;
- The lack of public access to officials' asset declarations.

With regard to the latter, the World Bank 2006 mapping exercise suggests that the majority of countries do not require publication of asset declaration, making them accessible for public scrutiny and accountability.

In addition, there are considerable costs involved in implementing effective asset disclosure regimes, including training of qualified staff, appropriate facilities with storage capacities, adequate systems and technological solutions for submission and verification of assets, etc. These costs can greatly vary across countries. For example, of the countries studied by OECD, Albania and Latvia have some of the most expensive systems (OECD, 2011).

While verification is a crucial aspect of asset declaration systems and nearly 60 % of the 74 countries surveyed by the StAR initiative have a designated agency tasked with the review of the declarations, no more than 30 % on the countries specify explicit criteria for verification. In addition, in many countries, the agency in charge of implementing the asset disclosure regime is usually separate from the enforcement agency and ultimately not responsible for ensuring successful enforcement or prosecution. A key factor in the success of investigations is the level of coordination between the body in charge of implementing the asset disclosure regime and the law enforcement bodies. For example, in Guatemala, the *Departemento de Declarcion Jurada Patrimonial* maintains the list of parties obligated to submit declarations, ensure timely submission, levies fines for non compliance and manages the storage of declarations. The *Departamento de Analisis, Verificacion e Investigacion Patrimonial* performs investigations of a sample of declarations selected from a high risk group. Argentina also splits the tasks of compliance/formal review and investigations between two separate bodies. Effective coordination can be ensured by having both bodies housed in the same agency such as in the case of Argentina.

For effective implementation, the body in charge of verifying the declarations must also be given appropriate (financial and human) resources to fulfil its mandate for the verification process to constitute a credible threat of detection. In Mongolia for example, verification is limited by the large number of filers (approximately 52,800) and the low number of officers in charge of administering the system (Burdescu R, et al, 2009).

Many countries have legal provisions requiring referral to law enforcement bodies and there are usually no legal barriers to the use of asset declarations as evidence in court. However, according to the OECD study, there is little evidence that data from declarations have helped in crime detection. Only two countries out of 14 recognised that declarations served as evidence of a criminal offence or as grounds for filing a crime notice. Exceptions where countries such as Latvia – where criminal proceedings were initiated against 12 officials - and Romania – where 99 cases have been referred to the public prosecutor for false statement since 2008 –, where failure to declare of false declarations are criminalised *per se*. The study concludes that declarations are better suited for detection of conflicts of interests.

The enforcement of meaningful sanction for non-compliance with asset disclosure laws is important to promote compliance. Non-compliance is usually considered a serious crime and result in disciplinary and often criminal penalties in countries such as Austria, France, Ireland, Italy, Korea and Slovakia. In Germany, up to 30% of a retirement pension can be withheld. In Mongolia, officials who fail to declare their assets face immediate dismissal. In 2009, 37 officials (out of the 52,800) failed to submit their declarations and were all dismissed from their position (Burdescu R, et al, 2009).

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