

**DRAFT LEGISLATIVE GUIDELINE: BASIC ELEMENTS REGARDING THE SYSTEM
OF GOVERNMENT HIRING OF PUBLIC OFFICIALS**

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INTRODUCTION

The purpose of this guide is to provide a general description of the basic elements to be included in the norms and measures of a given country with regard to the hiring of public servants in order to comply with the principles established in the Inter-American Convention Against Corruption (hereinafter “the Convention”) At the same time, it should be pointed out that this guide applies only to the general rules in the government hiring of public officials, respecting the constitutional framework of each State, and do not address areas such as salary levels, promotions, performance evaluation, retirement programs, pensions, etc.

1. HIRING OF PUBLIC SERVANTS

1.1. Definition of “public official,” ”government official” or “public servant.”

Provisions that provide a definition for public official, government official or public servant for the purpose of government hiring.¹

1.2. Coverage

1.1.1 General Rules

Provisions applicable to all public servants.

1.1.2 Specific Rules

Provisions which are specifically applicable to those public servants who may not be covered by the general rules, such as:

- a) Employees working in the branches of government, such as the Legislative and the Judicial branch;
- b) Employees working in oversight bodies, such as the Office of the Comptroller General, Office of the Prosecutor General, the Public Ministry, Office of the Attorney General, Service Commissions or their equivalents; and
- c) Senior public officials.

1.3. Merit

Provisions that explicitly establish that, as a general rule, the hiring of public servants will be based on merit.

¹ The Inter-American Convention against Corruption defines these individuals as “any official or employee of the State or its agencies, including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of hierarchy.”

2. DEVELOPMENT OF THE SELECTION PROCESS

2.1 Stages and deadlines

2.1.1 Stages

Provisions that establish a selection process based on merit, requiring merit based competition and knowledge and skills comparison, which at a minimum contain the following stages:

- a) Vacancy announcement
- b) Competitive examinations
- c) Selection of candidates
- d) Publication of results
- e) Recourse mechanisms and corrective measures

2.1.2 Deadlines

Provisions that establish clear and reasonable deadlines to comply with each stage of the merit selection process.

2.2 Vacancy Announcement

2.2.1 Content

Provisions that establish that vacancy announcements must at least contain the following:

- a) A job description;
- b) Requirements to occupy the listed vacancy;
- c) Deadlines for applicants to submit their applications;
- d) The documents that must be submitted with the applications;
- e) What form or forms must be submitted with the applications, if required;
- f) Place and address of where the applications must be sent; and
- g) Telephone and email address for applicants to contact in case they need clarification of any item.

2.2.2 Deadlines

Provisions that clearly establish deadlines for the publication of vacancy announcements, which must be posted with enough lead time before the date of the competitive examination in order to make it possible for a large number of applicants to participate, including those who are not yet in public service when open competitions are held.

2.2.3 Dissemination

Provisions that establish the obligation to widely disseminate vacancy announcements, including making announcements via the mass media, as well as the internet.

2.2.4 *Accessibility*

Provisions to facilitate the submission of applications either electronically or through other means of communication.

2.3 Competitive examinations, interviews and background checks

2.3.1 *Examinations and interviews*

Provisions that establish the use of tests or competitive examinations and, when applicable, of interviews in order to objectively determine whether the applicants are suitable to efficiently carry out the responsibilities of the position.

2.3.2 *Evaluation and scores*

Provisions that clearly establish how scores will be objectively and transparently assigned to examinations and interviews within the selection process.

2.3.3 *Background checks*

Provisions that allow for verifying the integrity of applicants such as background checks.

2.3.4 *Means of verification*

Provisions that contemplate means of verification such as records of tests taken and results, as well as keeping the documents checked on file.

2.4 Selection

2.4.1 *Justifying decisions*

Provisions that establish measures that justify the decisions made during the merit selection process based on elements that reflect how the evaluation criteria were applied.

2.4.2 *Evaluation criteria*

Provisions that ensure that:

- a) The candidate selected is the candidate with the highest scores in the examinations taken for the position to be filled; and
- b) Conflicts of interest or nepotism in the selection of candidates are avoided.

2.4.3 *Uniformity in criteria*

Provisions that establish that all stages in the selection process, including probationary periods, are applied with a uniform criteria to all candidates.

3 DISSEMINATION OF THE RESULTS OF THE SELECTION PROCESS

Provisions that establish the obligation to make public the results of the merit selection process. This includes a list of unsuccessful candidates and the scores of their evaluations in order that those interested may find out the results in a timely manner and lodge the appropriate appeals.

4 RECOURSE PROCESS AND CORRECTIVE MEASURES

4.1 Recourse

4.1.1 Mechanisms

Provisions that establish recourse mechanisms, whether administrative, judicial or both, for the purpose of clarifying, modifying or revoking substantive aspects of the merit selection process, taking into account the principle of due process and guaranteeing that any appeal lodged will be processed in a timely, objective and impartial manner.

4.1.2 Accessibility

Provisions that establish the recourse mechanisms are also accessible to candidates who are not yet in the public service, in cases where the competitions are open to the public.

4.2 Corrective measures

Provisions that provide for corrective measures in cases where irregularities are detected in the merit selection process.

4.3 Consequences and sanctions

Provisions that establish consequences and sanctions in the event that regulations governing the selection process are not followed or violated by the authorities or employees responsible for their implementation.

5 PERSONNEL HIRED UNDER OTHER CATEGORIES

5.1 Preventing the improper use of exceptions

Provisions to prevent the possibility of circumventing the merit based hiring system through the use of vague exceptions in the legislation such as “due to the needs of the public service”, “urgency” or “interim.”

5.2 Preventing the improper use of interim, temporary or transitory appointments

Provisions that establish measures to prevent those individuals holding interim, temporary or transitory appointments remain in the public service indefinitely without going through the merit selection process used to fill the positions they occupy.

5.3 Freely appointed positions

Provisions to ensure that the type of public service positions that, because of the nature of their responsibilities, should fall within the scope of the general rules governing the merit selection system, and do not become grouped with freely appointment positions. Rather they should be included within the employment pools of public entities and that the positions are filled with appointments made in accordance with the appropriate merit selection system.

6 AUTHORITIES RESPONSIBLE FOR THE HIRING SYSTEMS

6.1 Designation

Provisions that establish supervisory authorities to regulate, manage, develop or oversee the hiring systems for public servants.

6.2 Responsibilities and resources

Provisions that assign to the supervisory authorities the responsibilities or competence the position demands as well as with the human, technical and financial resources necessary to fulfill their responsibilities.

6.3 Coordination, evaluation and follow-up mechanisms

Provisions that will facilitate coordination between supervisory authorities as well as continuous evaluation and follow-up.

7 CONTROL MECHANISMS AND OVERSIGHT BODIES

7.1 Control mechanisms

Provisions that establish or strengthen suitable control mechanisms to ensure strict compliance with the selection rules for public service personnel.

7.2 Oversight bodies

Provisions that establish oversight bodies, authorities or organs of the selection systems of hiring for:

- a) All public servants;
- b) Employees who may not fall under the general hiring regulations such as:
 - i. Employees working for branches of government such as the Legislative and the Judicial Branch;
 - ii. Employees working for oversight bodies, such as the Office of the Comptroller General, Office of the Prosecutor General, the Public Ministry, Office of the Attorney General, Service Commissions, or their equivalent; and
 - iii. Senior public officials.

7.3 External oversight

Provisions that establish oversight entities responsible for the external control of the selection process and that they have the necessary authority to take preventive and corrective measures in the event the selection process does not follow the rules and regulations.

8 INDUCTION AND TRAINING

8.1 Support for new hires

Provisions that establish introduction programs or courses so that newly hired public servants may learn the rules of conduct and the responsibilities of the particular position.

8.2 Personnel in charge of managing the selection process

Provisions that establish training courses or programs for managers responsible for public service selection and hiring processes in order to ensure the efficient, objective and transparent application of the rules and regulations governing the system.