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Legal Solutions for Prevention from Corruption in Governmental Transactions

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Abstract: *Governmental transactions in its specific sense only include the contracts which are of financial aspect and take place in two forms of auction and tender. These transactions follow the private law norms and if a dispute occurs in this regard, the public courts can investigate it. Governmental transactions represent the process of supply of the goods and public services towards the governments for the private sector. One of the issues which can be raised in this regard in a global scale is that of the health of governmental transactions which means the use of public resources for public purposes. Governmental transactions can serve as a significant vehicle for administrative-economic corruptions; corruption in governmental transactions is among the corruptions that can be legitimized under the guise of transactions and for this reason dealing with corruption in this sector is hard. In the rpresent article, we study the legal solutions for prevention from the corruption in governmental transactions as well as the supervisory tools and the solutions for promotion of health of governmental transatctions.*

Keywords: *Corruption, Governmental Transactions, Tender and Auction, Prevention.*

INTRODUCTION

One of the ways for guaranteeing the health in governmental transactions is their supervision. Supervision has various types among which one can refer to people based supervision which is continuous and has lesser costs. People's access to the details of the decisions of the government can reduce the corruption. One of the ways through which one can have access to the information is the website of governmental contracts the charter of which has been lately approved (Alaei Fard, 2005).

The supervisory systems including General Inspection Office, Supreme Audit Court, Iran National Audit Center, Aministrative Justice Court and National Intelligence Service are the legal inspectors of the governmental and non-governmental companies and institutions. Also Central Bank and Central Insurance Company of Islamic Company as well as the Ministry of Economic Affairs and Properties monitor the economic activities of the government but none of them can be replaced with the public supervision and its benefits. The supervision of the citizens is a method for implementation of religious principle of promotion of good and denial of evil and monitoring the government. In 2011 the decision was made for releasing the

information of the significant governmental contracts through a website for the sake of promotion of the health of administrative system and fighting the systematic corruption (Tabatabaei Motamani, 2005).

Governmental contracts have a different legal system as compared to the private contracts; governmental transactions are those transactions that are signed by the government's agents who represent a specific organization with a real or legal person. The financial issues of these contracts are inspected by the public courts of the judiciary (Dehqan, 2011).

Roots of Corruption and Legal Defects of Governmental Transactions

Roots of Economic Corruption in Governmental Transactions

Economic corruption is the byproduct of the government's interference in economy under the name of regulation of the economic affairs. The outcomes of this interference are revealed in the form of politically grounded allocation of the economic sources. Naturally tenders and auctions as one of the significant governmental processes have not been immune to this corruption and even due to the 15 to 30 percent share of it gross domestic product of the countries and as a result its vital role in advancement of the affairs related to the construction and growth of the countries becomes more manifest and is discussed as one of the significant bottlenecks of corruption in administrative sector.

Economic corruption in governmental tenders is more in the form of bribery and consequently the collusion among the one who has requested for a tender and the one who offers the tender as well as those who are involved in this process. This corruption can occur throughout the whole stages of the process of tender including the timeline, providing the tender request announcement, contract sealing and delivering the product; of course, this corruption in every stage can take place in a distinct form. Another phenomenon that gives rise to corruption in governmental calls for bid is the arrangement of the tender within the framework of the political power. Other potential fields for economic corruption in governmental tenders consist of bureaucratic authority, violation of the rights of clients and its fragility in the bureaucracy system. Having said these and given the structure of the public calls for bid, the major fields of the economic corruption in these public tenders and auctions can be summarized in the following 4 main factors:

- 1- Rent based structure of governmental calls for bid;
- 2- Political nature of the process of calls for bid;
- 3- Bureaucratic authority;
- 4- Weakness of the mechanism of supervision;

Fields of Occurrence of Collusion in Governmental Call for Bids

In the process of announcement of call for bids due to the existence of rent sources some people take advantage of specific relations and through abuse of their own power and influential relatives in order to be benefitted from the economic, social, information and welfare possibilities and privileges and this leads to the emergence of a phenomenon called the influential oppressors.

Solutions for Prevention from the Financial Corruption in Governmental Transactions

Social Prevention

In social prevention the change of the character of convict and social conditions is intended. To this end we need to neutralize the social factors which are of effective role in the occurrence of crimes.

The most striking example of these factors is definitely poverty. Such factors as bad companions and learning criminal behavior, increase of sense of poverty and likewise the promotion of the culture of work conscience are of vital importance. Teaching the citizens of the issue of corruption is of certain aspects which include informing them of the rights and obligations of administrative affairs as well as the rights and obligations of the governmental agents.

Situational Prevention

In situational prevention we seek to change the specific situations where the probability of occurrence of crime is high. The goal is making the crime harder and more risky in order to dissuade the criminals.

According to the theory of rational choice, criminals are not different humans from the normal men and they are able to choose and the crime is the result of their rational choice in different situations. Situational prevention wants to affect this choice. Situational prevention struggles to convince the convicts that crime is less attractive given the existing situation.

Solutions for Making the Corruption More Risky in Governmental Transactions

Among the measures that are taken in order to make the crime more risky in situational prevention is increasing the danger of apprehension as well as the strengthening of official supervision. Thus, one of the solutions for prevention from the financial corruption is supporting the official supervision. Besides National Audit Court, General Inspection Center as a supervisory body of the Judiciary has been mentioned in the Article 174 of the Constitution. The law of formation of the General Inspection Center has highlighted the tasks of this office which are indeed focused on the supervision of the best conduction of the affairs and prevention from the occurrence of crime and finally the discovery of the crime.

In addition to the strengthening of official supervision through under cover inspection and enhancement of the consciousness of the managers of the features and actions of their staff their crime capability will become lesser and lesser due to the ever-increasing possible risks.

Solutions for Making the Crime Harder in Governmental Transactions

One of the solutions for making the crime harder in governmental transactions is periodical relocation of the staff. Long term stay of the staff in one position provides more opportunity for him to know the clients and start to collude with them. In fact, expansion of the government causes the jurisdictions to be expansive and the political officials to have wider power and influence. Therefore, reduction of tasks and jurisdictions of the staff can make the corruption harder in the governmental transactions.

Reducing the Attraction of Crime of Financial Corruption

According to the theory of rational choice, people choose based on rational preferences. Thus, we need to reduce the attractiveness of the financial corruption in governmental transactions. Another action that can be taken in this regard is the adoption of the law of support of reporters and newsmongers through rewards. Paying suitable salaries to the staff can make the financial corruption less attractive; if the salaries are low in a part of the government the corruption will be more attractive indeed.

Early or Growth Based Prevention

The early or growth based prevention seeks to focus on the parental deficiency and insufficiency in the upbringing of their children. In fact, some parents do know how to teach self-controlling to their children. Thus, one of the measures for early prevention from crimes in general and financial crime in particular is teaching self-controlling to the children inside the family and school. Righteousness and trustworthiness are required to be taught as the fundamental norms to the citizens so that acting against them to be harder for the people. These are points in which the early prevention of crime in general and financial corruption in particular must be taken into account.

Solutions and Principles of Prevention from Corruption in Governmental Transactions from the Perspective of Organizational Cooperations and Economic Development

Transparency in Shopping Cycle for Promotion of Justice and Just and Fair Behavior in It before the Participants in Govrenmental Transaction

Significant chllange of all countries is the trust and transparency in all stages of the cycle of governmental transactions. Regardless of the fact that in which stage the transaction cycle is and with which method the transaction takes place, transparency is used as a method against the secrecy.

Of course, right of access to the information must be mentioned in the legal documents and governments should provide the path for public access to the regulations and rules, judicial and administrative decisions, standard conditions of the governmental contracts and also real tools of information regarding the procedures that define, endow and manage the special transactions. Transaction opportunities must be announced in the call for bids in a sound way and on time and normal fashion. The conditions of participation like slection and

implementation of the regulations and also the deadline of the call must be announced to all participants in the tender so that the potential producers to have sufficient time to sign up for the bid and their proposals to be registered. The modern technology can play a significant role in providing the easy access to the information for the potential producers. In this way they can have necessary access to the information required for the facilitation of the supervision procedures, electronic systems as well as the portals. Moreover, older off-line media can be used as a vehicle for improvement of the transparency and responsiveness in all stages of the transaction cycle.

Transparency in Competitive Bids: Adoption of Cautionary Measures for Reinforcement of Health, Particularly as to the Exceptions of Competitive Bids

In line with this principle, the governments are obliged to make the competitive bids transparent through adoption of cautionary measures for strengthening the health particularly in the exceptions of competitive bids like intense urgency or national security. The guarantee of fair competition for the sake of confidence in management of public resources leads to the increase of the functionality of the system of governmental transactions. The simplicity and transparency of laws and procedures, exact determination of roles and responsibilities, easy access to the regulations and documents as well as the governmental information and financial information are the factors that are required to be taken into account for realization of the transparency.

Confidence of Spending the Resources for Realization of Predetermined Goals

To this end, we need legislation, planning, budgeting and use of supervisory mechanisms. Planning the transaction process and its costs must provide the ground for the reflection of the strategic perspective and long term governmental needs. The governments must merge the governmental transactions with the public financial management systems for increasing the transparency and responsiveness as well as the enhancement of the currency value. Supervisory institutions like auditing bodies and internal control systems or parliamentary committees must supervise the management of public resources for correct evaluation of the needs and the correct spending of the public resources based on the predetermined goals.

Having Skill, Knowledge, and Health by the Transacting Officials

Governmental transactions due to their high financial potentiality and also because of conflict of interests are always exposed to corruption. Given the sensitivity of the governmental transactions the incumbant officials must enjoy up-to-date knowledge and skills in this regard and take concrete steps towards the promotion of the management and technology. Furthermore, governmental officials must be mindful of the health standards and identify the possible conflicts between the private interests and governmental tasks.

Adoption of Mechanisms for Prevention from Health Risks in Transactions

Limited public financial sources and the increasing expectations of the people cause the management of these sources to be very critical due to the possible abuse of these resources that can lead to the wasting of public resources, corruption and collusion. The governments should make sure that the officials in charge of bids are competent enough to take care of the public interests. They must specify the risks that threaten the health of the vocational situations as well as the activities and projects that are potentially exposed to the damages.

Cooperation between Governmental and Private Sectors for Preservation of Standards of Governmental Transactions

Governments must provide the transparent standards for regulation of the complete cycle of the transactions particularly in contracts management. The governments must take advantage of the experiences of the private sector in enhancement of the knowledge of the officials in charge of the transactions. The potential contractors should be encouraged to take voluntary actions for reinforcement of their health. Governments need to keep their continuous dialogues with the private sector organizations for preservation and updating the developments of the market and reducing the contradictory information and enhance the currency value.

Mechanisms of Supervision of Governmental Transactions and Discovery and Determination of Sanction of Abuse

Every system's success and the changes that are done aiming at the reform owe their existence to the efficient and functional financial supervisions. This principle calls the governments to adopt specific mechanisms for supervision of the governmental transactions and discovery and determination of sanction of the misconduct. Governments must adopt certain measures in order to be able to detect possible and potential corruption in governmental transactions. Creation of an electronic system of transactions leads to the decrease of interference of the human factors and promotion of the security and enhancement of transparency and responsiveness of the governments in transactions.

Creation of Transparent Cycle of Responsibility along with Mechanisms of Control

Governments must create a transparent cycle of responsibility based on the tasks division and commitment for internal report. Moreover, regular and continuous control of the risks involved can provide the ground for internal and foreign controls in all stages and the veracity of the information must be proven. Prevention from the dangers and threats to which the transactions system is exposed require the adoption of an effective supervisory mechanism for optimized use of the public resources that pave the path for health.

Investigation of Complaints of Participants in the Call for Bids in a Fair Way and with Sufficient Time

The governments must make sure that the potential contractors have effective and on time access to the system of evaluation of the decisions of transactions and their complaints are immediately investigated and resolved. For making sure of the fair investigation a competent body of inspectors review the units that must observe the regulations regarding the decisions of the transactions as well as the scope of the damages and compensation.

Empowerment of Non-Governmental Organizations

Media and the public should have general knowledge of the governmental transactions in order to be able to evaluate and supervise them and blow the whistle in case of possible violation of the laws. The reports of the supervisory institutions must be provided for the public in order to have wider reach. For the sake of implementation of an effective responsiveness mechanism the governments must send representatives to the civil society organizations in order to inform the public of the value and intricacy of the transactions as well as the potential threats and dangers of the mismanagement or corruption. An exact evaluation helps the public to identify the actions taken by the government and its jurisdictions.

Conclusion:

In fact, economic corruption in governmental transactions is a method for having access to rents and assists other factors involved in rent. These factors in line with each other finally lead to the decrease of relative price of corruption and as a result its occurrence in governmental transactions. Moreover, the results show that according to the experts, the most important secondary factors that pave the ground for economic corruption include the lack of independent information of the process of transactions, political negotiations and lack of serious impeachment of the high ranked managers. The least important factors consist of the failure of complete and on time financial evaluation, failure of complete and on time technical and commercial evaluation and the beneficiary state of those who announce the request for bids.

The main foundations of the health of governmental transactions include guaranteeing the correct use of the public resources, keeping the public trust, prevention from corruption and maintaining the currency value. The most important approach is the principle-based and value-based approach. The principle based approach insists on the external control of the public services while value-based approach underlines the internal control. Finally the new system of health highlights the principle based and value-based approaches for reaching a balance between the health frameworks. Transparency is the key need of the new governmental transactions and the main element for adoption of healthy decisions. Responsiveness leads to the prevention and promotion of health in the process of governmental transactions. Trustworthiness and transparency constitute the basic requirements for validity and authority of the modern and democratic societies and in

them each part of the government has a positive effect in promotion of the health. Enthusiasm for manifestness of the processes and decisions for public investigation is a great impediment before extremism and abuse of resources in the interest of personal power. Increase of competition leads to the achievement of the best price and quality. Competition is not the goal rather it is a means for functionality and economic efficiency. Correct use of public resources requires effective management and supervision prevents from systematic deviation from the predetermined goals.

Finally, health of the governmental transactions, protection of the public resources and prevention from the wastage of them play a key role in governmental transaction. Moreover, for guaranteeing and having the effective sanction for their legal framework requires certain regulations and instructions.

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