

U4 Expert Answer



Influence of interest groups on policy-making

Query

Please provide an overview on the state of research on negative influence of interest groups on decision-making - including state capture – as well as their potential benefits, based on publicly available information and papers. Particular reference should be given to South East Asia and East Asia including China. Identify factors which control and prevent interest groups from having a negative influence on the governance and policy decisions in a country (e.g. transparency, media, removal of discretion, ways of separating and ensuring conflicts of interest are avoided), providing examples/lessons learned from countries in the region which have curbed corruption/illegal influence by interest groups whilst maintaining the (potential) benefits.

Purpose

There is increasing recognition of the emergence of new and pernicious interest groups which have influence on policy making in Vietnam and distortions in the market. We would like to help the Government understand better the nature and scenarios under which interest groups emerge and capture the state. They are also aware that there are some benefits and want to see if they can disentangle these. Regional evidence would be especially helpful.

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Caveat

There is very little research on interest group influence on policy-making and its potential benefits in Asian countries. Examples of best practices and lessons learned from these countries are also scarce.

Summary

Interest groups are associations of individuals or organisations that on the basis of one or more shared concerns, attempts to influence public policy in its favour usually by lobbying members of the government. Interest groups influence on policy making is not a corrupt or illegitimate activity *per se*, but a key element of the decision-making process. However, disproportionate and opaque interest group influence may lead to administrative corruption, undue influence, and state capture, favouring particular interest groups at the expense of public interest. Transparency is thus key to ensure that policy-makers do not give preferential treatment for specific interest groups. Regulations on lobbying, conflict of interest, asset

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Date: 12 June 2012 **Number:** 335

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disclosure, competition, as well as, on freedom of information are among the wide range of rules adopted by countries across the world to increase transparency and accountability in decision making. This answer thus provides for examples on measures taken by East and South-East Asian countries to increase transparency and accountability and avoid undue influence and other forms of corruption, and best examples on regulating lobbying, focusing on the United States, Canada, and the European Union.

1 Interest group influence on policy-making

Defining interest groups

Interest groups or special interest groups are any association of individual or organisations that on the basis of one or more shared concerns, attempt to influence public policy in its favour usually by lobbying¹ members of the government.

Interest groups may be classified according to their motivation: (i) economic, including individual corporations and business organisations; (ii) professional, including professional groups such as trade unions and farmers; (iii) public interest, including human rights groups, environmental groups, among others (Chari; Hogan; Murphy, 2010). For the purposes of this query, we will focus on the influence of economic interest groups.

Interest groups' strategies and tactics

Interest groups may directly, or indirectly through consultants/lawyers (the so-called professional lobbyists) seek to affect legislative action. These attempts to influence policy-making may take place through different mechanisms, including direct communication with government officials, participation in public hearings, drafting reports to member of the government on specific policy issues, as well as through media comment (Chari, Hogan; Murphy, 2010).

¹ The OECD (2008) describes lobbying as the 'existence of powerful interests – corporate, private or other jurisdiction such as sub-national governments – that makes efforts to influence government decisions, in particular policy making, legislation or the award of contracts'.

Such groups may also have different type of resources to influence policy-making, such as campaign funding, expertise on policy issues, information on the opinion of other policy-makers (Dur; Bievre, 2007).

2 Pros and cons of interest group influence

Interest groups' influence on policy making is not a corrupt or illegitimate activity *per se*, but a key element of the decision-making process (Zinnbauer, 2009). However, the advantages and disadvantages of interest group influence will depend on how much power such interest groups have as well as on how power is distributed among them (Dur; Bievre, 2007) A disproportionate influence of business groups, for example, can lead to undue influence or even state capture. In this context, the relationship between policy-makers and interest groups walk a fine ethical line that separates participatory democracy from undue influence.

Pros: potential benefits

There is little evidence of the concrete benefits that could be brought by interest groups influence on decision making. In general, interest groups may improve policy-making by providing valuable knowledge and insight data on specific issues. They also represent interests which may be negatively and involuntarily impacted by a poorly deliberated public policy (OECD, 2009). Moreover, as such groups keep track of legislative and regulatory processes, they also have an important role in holding government accountable (OECD, 2009).

In addition, Campos and Giovannoni (2008) have shown that in transition countries, interest group influence through lobbying is found to be an alternative instrument of political influence vis-à-vis corruption. In this context, their findings are that lobbying, if adequately regulated, is a much more effective instrument than corruption for exerting political influence and that lobbying is also a much stronger explanatory factor than corruption for firm performance.

Previous studies have also shown that the extent of lobbying increases with income, and that firms belonging to a lobby group are significantly less likely to pay bribes. On the other hand, in politically less stable countries, firms are more likely to bribe and less likely to join a lobby group (Campos, Giovannoni, 2006).

Cons: undue influence and state capture

Interest group influence, if opaque and disproportionate, may lead to administrative bribery, political corruption, undue influence and state capture.

Differently from bribery and political corruption, which are more obvious forms of corruption, undue influence is more subtle and not necessarily illegal (OECD, 2009), meaning that interest groups might exercise influence on policy-making without resorting to illegal payments (Kaufmann et al., 2000). In this context, interest groups will attempt to create a 'sense of reciprocity' with a public official, for example by legally making campaign donations, hosting receptions, providing research, among other favours (OECD, 2009).

Undue influence may also be achieved by promising public officials well-paid future jobs in the private sector in exchange for support in shaping regulations, or by placing former ministers, parliamentarians in lobbying firms (OECD, 2009).

Disproportionate and unregulated influence by interest groups may also lead to state capture, which occurs when firms shape and affect the formulation of laws and regulations through illicit private payments to public officials and politicians; for instance by illicit contributions paid by private interests to political parties and election campaigns; the sale of parliamentary votes on laws to private interests, among others (Kaufmann et al., 2000).

Examples from transition economies show that the ownership and origin of a firm may play a role on how they attempt to exercise influence. For instance, state owned or privatised enterprises are expected to retain considerable access to and ties with public officials, enhancing their influence on the state without resorting to illegal payments. New firms, on the contrary, are less likely to be influential but more likely, on the other hand, to resort to state capture or administrative corruption to compensate their lack of influence (Kaufmann et al., 2000).

3 Regulating interest group influence

As mentioned, interest group influence on policy-making might bring potential benefits for the society if

corporate undue influence is prevented and transparency and accountability enhanced. In this context, in order to avoid the negative impacts of interest group influence on policy measures, full transparency is essential. Therefore, a broad range of regulations should be established depending on the country's political environment and state of development (Zinnbauer, 2009). These include lobbying registration and disclosure, prevention of conflict of interest, regulation of the revolving door, comprehensive asset and interest disclosure by public officials, as well as anti-trust regulations and freedom of information laws.

Countries in East and South East Asia have recently approved laws which directly or indirectly help preventing potential negative consequences of interest group influence, and increase transparency and accountability in decision making.

Lobbying regulation

Mandatory lobbying registries are fundamental to ensure interest group activities are more transparent and accountable. Ideally, registration systems should allow for public disclosure of lobbyists' names, their clients, issue areas, targets, techniques, as well as financial information. Effective implementation will also require robust mechanisms of oversight and enforcement (Zinnbauer, 2009).

Taiwan is the only country in the East and South East Asian region that regulates lobbying (Chari; Hogan; Murphy, 2010). The legislation passed in 2007, took effect in 2008. The Act defines lobbying as '*any oral or written communication to legislative and executive branch officials with regards to the formulation, modification or annulment of policies or legislation*'. Officials covered by the act include the President, Vice-President, and high-ranking officials in central and local government. According to the law, lobbyists are required to register their lobbying activities, and declare their lobbying expenditures to the concerned agencies. Officials must also report on their communication with lobbyists within seven days. In addition, the law also regulates post-public employment. The President, Vice-president, political appointees, and heads of local government are banned from lobbying in person or on

behalf of others during the three years after they leave office².

Conflict of interest

Conflict of interest can be defined as a “situation where and individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests” (Transparency International, 2009). For instance, companies may face accusations of improper influence if they employ parliamentarians as consultants or have them on their board.

Conflict of interest, thus, may arise ‘when an individual with a formal responsibility to serve the public participates in an activity that jeopardizes his or her professional judgement, objectivity, and independence’ (U4 Resources Centre, webpage).

In this context, preventing conflict of interest is also important for enhancing transparency and accountability in public decision making. Regulations may take a number of forms, including laws, codes of conduct and internal rules or management guidelines. They should also cover post-public employment and establish mandatory ‘cooling-off’ period to avoid the revolving door, as enterprises and their consultants often use former public officials for lobbying purposes (Transparency International, 2010).

Three main types of conflict of interest regulation can be identified: prohibitions on activities, declarations of interests, and exclusion from decision-making processes (Reed, 2008)

Thailand’s new constitution regulates conflict of interest. Specific provisions require government officials to be politically impartial (Section 70, Chapter IV) and prohibit members of the House of Representatives from placing themselves in situations where conflicts of interest might arise. In this context, a member of the House of Representatives is prohibited to (i) hold any position or have any duty in any state agency or state enterprise, or hold the position of member of a local assembly, local administrator, or local government official or other political official other than minister; (ii)

² Lobbying regulation in Taiwan, please see: <http://www.chinapost.com.tw/taiwan/national/national-news/2008/08/04/168456/p2/Taiwan's-Lobbying.htm>

receive any concession from the State, a state agency, or state enterprise, or become a party to a contract of the nature of an economic monopoly with the State, a state agency, or state enterprise, or become a partner or shareholder in a partnership or company receiving such concession, or become a party to a contract of that nature; (iii) receive any special money or benefit from any state agency or state enterprise apart from that given by a state agency or state enterprise to other persons in the ordinary course of business (OECD/ADB, 2008).

While the legal framework is assessed as fairly comprehensive, implementation of the law remains a great challenge in the country, in particular because the anti-corruption agency (NCCC) mandated to enforce the law suffers from a backlog of corruption and malfeasance cases, making it almost impossible to focus on conflict of interest issues (OECD/ADB, 2008).

Asset declaration

Asset declaration regimes have been introduced in many countries as a way to enhance transparency and integrity as well as the trust of citizens in public administration. They aim at preventing conflicts of interest among public officials and members of the government and avoiding illicit enrichment or other illegal activities by monitoring wealth variations of individual politicians and civil servants (Djankov et al., 2010).

While conflict of interest is still regulated through scattered laws, asset declaration rules in **Indonesia** are established in specific legislations. Members of the government are thus required to declare their assets, income and liabilities before taking up office, after two years in office, when exiting, as well as when requested by the **Corruption Eradication Commission** (KPK), the agency responsible for overseeing such declarations. In 2009, 116,451 public officials filled declarations, which are all formally scrutinized by the Commission. Accuracy verification takes place in 1-5% of the declarations (World Bank, 2011).

The Commission has been investing in technology and in qualifying its personal. A special unit was created for competitive recruitment of new staff members, and annual employee reviews to monitor performance and individualised training were established. In addition, the Commission introduced enhanced analysis and reporting using data warehouse and business

intelligence tools that provide targeted verification options (World Bank, 2011).

A shortcoming of the law relates to sanctions for non-compliance, which are not well defined. There are administrative sanctions for late or non-filing prescribed, but the law does not mention penalties for inaccuracy (World Bank, 2011).

Transparency in decision making processes and access to information

Interest group influence may also depend on the salience of an issue – ‘the more attention the public pays to a specific decision; the more difficult it should be for a special interest group to influence the outcome’ (Dur; Bievre, 2007:8). In this context, governments should encourage citizens’ participation, facilitating (or making mandatory) open hearings on policies and consultative decision-making processes (Transparency International, 2009).

Other measures which may enhance transparency and accountability in policy-making, and help to identify any suspicious relationship between special interest group and politicians include: freedom of information legislation to allow access to government documents related to the policy-making process; E-government mechanisms to encourage consultations and public comment on draft laws and regulations; and public disclosure of Parliamentary votes, among others (Hellman, 2011).

In **Indonesia**, the [Public Information Disclosure Act](#) that entered into effect in 2010 specifically encourages civil society’s participation during the policy process. The act aims at: (i) securing the right of the citizens to know the plan to make public policies, public policy programs, and the process to make public decisions, as well as the reason of making a public decision; (ii) encouraging the participation of the society in the process of making a public policy; (iii) increasing the active role of the people in making public policies and to manage the Public Agencies properly; (iv) materialising good governance, i.e., transparent, effective and efficient, accountable and responsible; (v) knowing the rationale of a public policy that affects the life of the people; (vi) enhancing the information management and service at Public Agency circles, so as to produce good quality information service (Art. 3, Public Information Disclosure Act).

Enhancing competition and improving corporate governance

Concentration of capital may lead to an inevitable concentration of political influence. Therefore, increasing competition, particularly in sectors dominated by monopolies or powerful conglomerates is also important to enhance competition over policy influence. Measures to promote competition include restructuring key monopolies; removing entry-barriers; removing anti-competitive advantages; improving investment climate; promoting different forms of interest representation among existing firms, and strengthening anti-monopoly agencies, among others (Hellman, 2011).

In **South Korea**, where business have long maintained controversial relations with politics (Transparency International, 2006), the government has undergone important reforms to reduce the power and influence of the Chaebol, which are large conglomerate family-controlled firms characterised by having strong ties with government agencies. After the Korean Business Association (KFI) successfully lobbied the government to bail out the Chaebol in three different cases (1974, 1987, and 1997), labour unions, international investors, small shareholders, as well as other civil society organisations have advocated for more regulations on the Chaebol (Lee, 2008). An Anti-trust law was approved in the 1980s (Petersen, 2011) and several reforms were implemented in the late 1990s aiming at holding Chaebol leaders more accountable, eliminating loan guarantees among affiliates, and enhancing managerial transparency (Yanagimachi, 2004). The government also empowered the existing anti-trust office ([Fair Trade Commission](#)) with quasi-judicial power.

It is yet to be analysed whether the above mentioned reforms have diminished the negative influence of such conglomerates on South Korea policy-making.

Media and CSOs

Civil society and media organisations should monitor corporate political engagement (Transparency International, 2009), for instance by tracking lobbying activity or campaign finance (e.g. the [US Open Secrets](#), Center for Responsive Politics, which is a research group tracking money in US politics and its effect on elections and public policy). Civil society may also help holding politicians and other members of the government accountable by engaging in the policy process. In **Bangladesh**, for example, the non-governmental organisation – [Jagoree](#) – provides for a

platform for youth to get informed and participate in politics and policy-making. They also have an active role in informing their communities about policies which could affect their lives and advocate for change.

4 Best practice examples

Countries have adopted different regulations which help preventing the negative influence of interest group on policy-making, ranging from lobbying and conflict of interest regulations to access to information laws.

Interest group influence has been long regulated in the United States and in Canada, where disclosure requirements for lobbyists and broader regulations to enhance integrity in the public sector have been in place since many years. More recently, the European Union has also improved its regulations aimed at avoiding undue influence on policy-making.

United States

The [Lobbying Disclosure Act](#) (1995) requires the mandatory registry of lobbyists or any organisation employing a lobbyist with the Secretary of the Senate and the Clerk of the House of the Representatives. Lobbyists must disclose a wide range of information, such as their identities and of their organisations, identities and business addresses of clients, issues lobbied on (with specifics on pieces of legislation), as well as their income (per client) and total lobbying expenditures every three months. The law also requires that all registrations and reports are made available for public inspection over the Internet as soon as technically practicable after the report is filed.

In terms of preventing conflict of interest, the US establishes a separate system for persons occupying high level positions. In the Executive branch, the Office of Government Ethics (OGE) is responsible for the various Codes of Conduct and statutory restrictions, and at the federal level, the [Ethics in Government Act](#) requires that candidates for elected offices, elected officials and high-level appointed officials submit a publicly available personal financial report (OECD, 2011). The Act establishes three types of reports: (i) new entrant/nominee: due within 30 days after assuming; (ii) incumbent: due annually, no later than the May 15th following the covered calendar year, and; (iii) termination: due on or before the 30th day after leaving a covered position.

The reports must contain information on sources and amounts of income, assets, liabilities, gifts, reimbursements and fiduciary and employment positions held outside the government, agreements and arrangements regarding future employments, and the names of major clients (persons or organisations) for whom personal services were performed for compensation in excess of a specified threshold amount.

They are first reviewed by the agency where the official hold – or used to hold - a post, and the OGE (Office for Government Ethics) acts like a secondary review agency for Presidential appointees. Sanctions may involve a filing fee of \$200 if a financial disclosure report is more than 30 days late, and a civil monetary penalty of up to \$11,000 if false information is submitted³.

Civil society and the media can also help monitoring the declarations, since public access to financial disclosures is available upon request.

Canada

Canada provides for a fairly strict lobbying regulation. Under the [Lobbying Law](#), members of the government are not allowed to engage in lobbying activities with the Federal Government for a period of five years after they leave office. Moreover, the registration of entities and individuals defined as lobbyists⁴ is mandatory and the information registered in public.

A [Lobbyist Code of Conduct](#) was also developed in order to ensure that “lobbying is done ethically and with the highest standards with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision-making”. The Office of the Commissioner of Lobbying

³ More information on the US’ public financial disclosure can be found at:

- http://www.usoge.gov/forms/sf278_pdf/278guide_04.pdf#xml=http://www.dmssearch.gpoaccess.gov/PdfHi
- ghlighter.aspx?DocId=457&Index=D%3a%5cwebsites%5cUseIndex%5cOGE&HitCount=2&hits=c48e+c48f

⁴ The Canadian Lobbying Act identifies three types of lobbyists: (i) consultant lobbyist (a person hired to communicate on behalf of a client); (ii) in-house lobbyists who work for compensation in a for-profit entity; (iii) in-house lobbyists who works for compensation in a non-profit entity. Please see: <http://laws.justice.gc.ca/eng/acts/L-12.4/>

is responsible for the implementation and enforcement of both the lobbying law and the code of conduct. The Commissioner is an independent agent of Parliament, appointed by both houses of Parliament for a seven years term.

As to conflict of interest, according to the [Conflict of Interest Act](#), all public officials, including high-ranking members of the government, have the duty to identify and avoid possible conflicts of interest.

The Act requires public officials to provide a confidential report on assets and liabilities, containing their former and current activities as well as those of their spouse and dependent children. It outlines rules regarding which assets may or may not continue to be directly managed, and gives direction on how to divest of assets. It also sets limitations on outside activities, acceptance of gifts, invitations to special events and hospitality, as well as post-employment activities, and sets out a recusal mechanism to assist Ministers in avoiding conflicts of interest in the performance of their official duties and functions. In addition, more specific guidelines covering important issues, such best practices in dealing with lobbyists and political fundraising activities is provided in the guide for Ministers and Ministers of State⁵.

European Union

Since June 2001, a joint 'Transparency Register' to cover lobbying activity in both the European Commission and the European Parliament has been in place. All lobbyists who register are required to declare who their clients are, and the income generated from lobbying activities. While the register is not mandatory, the European Parliament is maintaining its own system for issuing access passes, and lobbyists who do not register are not eligible for the pass (Office for Promotion of Parliamentary Democracy, 2011).

Nevertheless, growing concerns over unethical and illegal negotiations between Members of the European Parliament and special interest groups made the European Parliament strengthening its internal ethics regime⁶. In this context, a new code of conduct for

members of the European Parliament was approved in December 2011.

The [Code of Conduct for Members of the European Parliament](#) (MEPs) establishes detailed disclosure requirements of financial interests as well as an explicit ban on receiving payments or any kind of reward in exchange for influencing parliamentary decisions. The code also provides for clear rules on the acceptance of gifts (gifts worth more than 150 Euros are not allowed) and on the possibility of former MEPs working as lobbyists⁷.

While the code is assessed as strong and comprehensive, the text still has some weaknesses, particularly with regards to interest group influence (Transparency International, 2011). For example, the Code does not include a "cooling off" provision to prevent MEPs from moving straight into lobbying jobs after the end of their term, and does not require MEPs to keep a record of all significant meetings with representatives of interest groups in connection with their work ('Legislative footprint').

⁵ The full text of the code *Accountable Government: A Guide for Ministers and Ministers of State* is available at http://pm.gc.ca/grfx/docs/guidemin_e.pdf

⁶ In March 2011, an undercover investigation of the Sunday Times showed Members of the European Parliament

negotiating tabling amendments in exchange from payments. Please see: <http://www.euractiv.com/future-eu/journalistic-spoof-traps-meps-br-news-503281>

⁷ The Code is available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+RULES-EP+20120110+0+DOC+PDF+V0//EN&language=EN> (annex I, p.128)

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