I am very pleased to have been asked to pull together some key points on conflict of interest theory for IBFAN-members and like-minded persons who are interested in exploring how the lenses of conflicts of interest might help in their efforts to protect and promote breastfeeding and adequate infant feeding.

Some IBFAN-members may know me from publications such as:

- Richter, J. (2004). *Public-private partnerships and international health policy making: How can public interests be safeguarded?* Helsinki, Ministry for Foreign Affairs of Finland, Development Policy Information Unit (or the 8 page briefing paper summarizing key concerns and recommendations).

They were first attempts to sketch out what I am further developing here, integrating new developments in this area.

As in all my publications, I have done my best in this presentation to include a selection of references which show where my thinking comes from and allow interested persons to find out more about the issues raised.
By concerned citizens I understand all the persons who work in the field of nutrition, health, or business & human rights - whether as health and nutrition professionals and -workers, civil servants, participants in a public interest advocacy groups and networks, labour/trade unions and social movements, or academics - who wish to protect the capacity of public interest actors to hold infant food corporations accountable via implementation and enforcement of the 1981 International Code of Marketing Practices of Breastmilksubstitutes & subsequent relevant World Health Assembly Resolutions.

Those who do not know IBFAN and its work well may want to look at the 7 minute video All about IBFAN
http://ibfan.org/all-about-ibfan or www.youtube.com/watch?v=YpuK1w-ZRjc (english, spanish or french version)
Why bother with understanding conflicts of interest?

People who work on corporate accountability issues, people who work on health and nutrition issues often have a good ‘gut feeling’ about what constitutes a conflict of interest

They may also know that in the infant feeding arena much was done to identify and address them e.g. via:

The *International Code of Marketing of Breastmilksubstitutes (1981)* & subsequent relevant *World Health Assembly (WHA) Resolutions on conflicts of interest*

And the *WHO/UNICEF Global Strategy on Young Child and Infant Feeding (2002)*

The *World Health Assembly Resolution 58.32 of 2005*, for example, urges Member States to ensure that «financial and other incentives for programmes and health professionals do not create conflicts of interest»

For more discussion, see e.g. *Code Essentials* No 1, p. 22; and No 3, pp.22-27, IBFAN ICDC (International Code Documentation Center), Penang, Malaysia

For more guidance on how to adress risks created by infant food donations, see point 6 «Minimise the Risks of Artificial Feeding», *Infant Feeding in Emergencies: Operational Guidance for Relief Staff and Programme Managers*, IFE Core Group (2007), p. 13 ff
Many may have thought that problems of undue corporate influence were solved when the *WHO/UNICEF Global Strategy for Infant and Young Child Feeding (GSIYCF 2002)* stressed the need to respect «accepted principles for avoiding conflicts of interest» & moreover delineated the role of manufacturers...
of industrially manufactured foods for infants and young children by restricting their role to:

- meeting specific quality, safety and labelling standards (Codex Alimentarius);
- conforming to the International Code & WHA Resolutions

The Global Strategy stated in the introductory paragraph about **Obligations and Responsibilities** of the various actors:

“Governments, international organizations and other concerned parties share responsibility for ensuring the fulfilment of the right of children to the highest attainable standard of health and the right of women to full and unbiased information, and adequate healthcare and nutrition. Each partner should acknowledge and embrace its responsibilities for improving the feeding of infants and young children and for mobilizing required resources. All partners should work together to achieve fully this strategy’s aim and objectives, including by forming **fully transparent** innovative alliances and partnerships consistent with **accepted principles for avoiding conflict of interest.**” (para 35, emphasis mine)

Para 44, which defined the role of “commercial enterprises” reads: “Manufacturers and distributors of industrially processed foods intended for infants and young children also have a constructive role to play in achieving the aim of this strategy. They should ensure that processed food products for infants and children, when sold, meet applicable Codex Alimentarius standards and the Codex Code of Hygienic Practice for Foods for Infants and Children. In addition, all manufacturers and distributors of products within the scope of the International Code of Marketing of Breast-milk Substitutes, including feeding bottles and teats, are responsible for monitoring their marketing practices according to the principles and aim of the Code. They should ensure that their conduct at every level conforms to the Code, subsequent relevant Health Assembly resolutions, and national measures that have been adopted to give effect to both”.

However, the trend towards ‘partnership’ and ‘stakeholder’ relationships with industry has led to new challenges & confusing discussions

• What are Conflict of interest? - Actual? Perceived/Apparent?
• Even more confusing: ‘Conflicts of interest’ versus ‘conflicting’ and ‘diverging’ interests?
• And what are ‘interests’ all together?

Remark: One major challenge today consists in ensuring that concerns over the predicted increase of Cols caused by ‘partnership’ and ‘stakeholder’ - relationships with corporations and influential funders - and lack of measures to address this situation - are not being sidelined by statements such as «but we all have conflicts of interest».

Maybe one way to ensure a meaningful debate would be the following: ask those who bring forward this, or similar sweeping, statements if they believe that there is no difference between e.g. a village football club seeking sponsorship from a local baker, a patient group that accepts funding from pharmaceutical companies, a public health institution or academic institute that takes funding from a soft drink company, and an UN agency/or major public interest NGO actively seeking financial resources from major transnational corporations.

Another obstacle to meaningful debate consists in the widespread misunderstanding that effective Col measures would preclude public interest actors from interacting with corporations. This is not the case. Conflict of interest rules in public procurement, for example, do not rule out that a public institution can procure needed goods. But they are part of the system of checks and balances meant to ensure that public interests are safeguarded when public institutions spend taxpayers’ money.

I hope that the material contained in this power-point presentation clears up such misunderstandings and provides some food for a much needed constructive debate.
Statement and some discussion of this point, see Anne Peters & Lucas Handschin, editors (2012). *Conflicts of interest in global, public and corporate governance*. Cambridge & New York, Cambridge University Press, pp. 4-6

PS: Interested readers (with a legal background) who would like more information about why law Professor Anne Peters calls conflicts of interest an «elusive» concept and how to define the conflict of interest concept in a way that it helps law and policy makers to better deal with associated problems can find this information in her overview chapters, «Conflict of interest as a cross-cutting problem of governance” & “Managing conflicts of interest: lessons from multiple disciplines and settings” in Peters & Handschin, op. cit.
One could say that such sayings may be behind peoples’ ‘gut feelings’ about what constitutes a conflicts of interest. Dictionaries define «gut feelings» as «intuitive feelings» - feelings which often give an indication that something is wrong. A better understanding of CoI theory may help to better check, and explain, whether the gut feelings are about conflicts of interest or whether another way of describing the situation (e.g. use of the term «clash of interests») would better reflect the problem.

Before continuing to read the presentation try to find equivalent sayings in your respective languages.

PS: you will see later how such sayings and illustrating images can be used when raising attention to CoI issues from a «reasonable person» perspective.
OUTLINE

I. Col IN A NUTSHELL: Explains the spirit behind Col regulation & introduces some Col definitions

II. Col IN GLOBAL NUTRITION GOVERNANCE: Raises attention to the lack of adequate Col regulation in the international nutrition arena & the problem that the Col concept is being muddled and redefined (example: SUN)

III. WHAT CAN BE DONE? Sketches some ideas how concerned citizens could advocate for Col policies in order to protect the capacity of public interest actors to hold TNCs accountable
I. Conflicts of interest in a nutshell
Its spirit = conceptualisation by lawyers

• Col relate e.g. to professionals who are, or can be conceptualised, in a
  *fiduciary (trust) relationship:*
    judges; public officials & civil servants;
    more recently: physicians etc.
• Fides (latin) means trust, faith, confidence...

Source: This conceptualisation is recommended e.g. by Marc A. Rodwin & Anne Peters, both law professors specialised in conflict of interest issues


& Rodwin, M. A. (2011). *Conflicts of interest and the future of medicine: The United States, France and Japan.* New York, Oxford University Press, for further explanations of his of Col conceptualisation (see also later in this PPT slide show)
This book also contains a section about the roots of the Col concept in Roman fiduciary law, pp. 251-253
Fiduciary (trust) relationship

*Fiduciaries (the trust-takers)* decide and/or act on our (the trust-givers) behalf

- their decisions are *important* for us
- but we cannot check well on their decisions
- The ‘trust givers’ must be able to trust in the ‘trust-takers’ decisions

PS: Prof. Rodwin proposes to call the trust-givers «fiducies»
What is a conflict of interest?

Some definitions

Professor Ann Peters proposes as a first general definition:

«A situation in which some interest of a person has a tendency to interfere with the proper exercise of his [or her] judgement in another’s behalf»

Michael Davis, 1998

For a **legally meaningful definition of Col**

Peters stresses the need to avoid confusing «conflicts of interest» with what others often call «conflicting interest»

«The conflict we are dealing with is an *intrapersonal conflict* arising *within a human or an institution* which is entrusted with such [fiduciary] decision making. It is not a clash between different actors.»

Remember the **key difference**: **WITHIN versus BETWEEN**

Peters adds: “If all situations where a public... or professional decision-maker takes conflicting interests into account were qualified as a ‘conflict of interest’, then every assessment of costs and benefits, and every balancing decision would involve a conflict of interest.” p. 5

For additional explanations, see Peters & Handschin (2012), op. cit., pp. 4-6 (quote on p. 5)

See also p. 363 “Crucially, the concept of conflict of interest relates to intrapersonal conflicts. The ‘conflictedness’ is a state of mind of a person who is empowered to take decisions on behalf of others.... It can hardly be verified from the outside whether a decision-maker has in fact been conflicted, whether that conflict had a decisive impact on the decision-making process...”

PS: Prof. Rodwin draws attention to “conflicting interests” within a person: “conflicts of interest are not the same as conflicting interests. **Multiple interests may pull people in different directions. But unless such interests compromise known obligations, no conflict of interest exists.**” Rodwin, 1993, op. cit. p. 9

PPS: Seen the differing meanings of conflicting interests and also because for most people it would still sound like conflicts of interest, I would encourage more reflection on how to best call, a classify all kind of other situations which are not Col in the strict legal sense. Talking about conflicting interest, clashes between interests, divergences of interests etc. may be useful in first attempts to draw attention to problematic situations that they perceive as conflicts of interest. However, action groups and other public interest actors may try to look which word would describe a specific situation most accurately in the more precise but simple terms.
The developers of this definition chose “a definitional approach that is deliberately simple and practical to assist effective identification and management of conflict of interest situations.” – often also referred to as a ‘hands-on definition’.

What is a conflict of interest?

Some other definitions

1. Most widespread practical “hands-on-definitions” in medicine:
   Institute of Medicine (IoM) 2009 definitions of (I) ‘individual’ and (II) ‘institutional’ conflicts of interest in medical research, education and practice, & development of clinical practice guidelines

2. A more complex definition by law professor Marc Rodwin
   Focus: fiduciary relationship & duty of loyalty; analysis also taking structural causes & systemic effects into account

This sounds all very complicated. But each of these sources, and definitions they propose, help us understand some other aspects of conflict of interest regulation

.................................................

For those who want to know more about how to use this concept, see summary (pp. 1-22) & chapter 2: Principles for identifying and assessing conflicts of interest (pp. 44-61).

Individual CoIs
key notions of IoM/Thompon’s concept

• A conflict of interest is a «set of circumstances» that creates a risk;
• Personal primary «interests» are e.g. key ethical & legal obligations of professionals (for physicians e.g. with respect to patient care, research, medical education, and advisory functions on public guidelines and policies);
• Secondary interests are often subdivided into
  (1) «financial» and other (2) «personal» interests
  (= Col categorisation by major causes: No 1 & 2)

Financial CoI of physicians include: financial ties with health industries (such as gifts and sponsorships); gain from the sales of health products; problematic incentives; shares in health care companies
Personal interests: include desire for prestige or power; preference for family and friends
Secondary interests are not [necessarily] illegitimate in themselves

...but the aim of conflict of interest regulation is

«to prevent these secondary factors from dominating or appearing to dominate... in the making of professional decisions» (Dennis F. Thompson 1993)

In the case of conflict between
the primary and a secondary interest
the primary interest must always prevail!

In other words: The primary ‘interest’ must take precedence = prime Col principle in this conceptualisation

NB: Individual Col category No 3: 

**Divided loyalty Col**

Duty to act with undivided loyalty
highlighted by law professor Marc Rodwin

In public functions, the “idea was that the public official or civil servant, [or expert in an advisory roles], needs to **act exclusively** in the **public interest.**”

They were meant to be “loyal” to those they are meant to serve, “to be scrupulously honest with them and to act solely for their benefit” (1993)

Conflicts of interest caused by divided loyalties «occur when [e.g] physicians perform roles that interfere with their acting in their patients’ interest or when their loyalty is split between patients and a third party» (2011)

Divided loyalty Col - examples

• when physicians perform, at the same time, the role of a healer and researcher;
• when they provide a service for a pharmaceutical or food company (= third party which has a for-profit interest); or when academics sit on the boards of health related companies.

............... 
• when civil servants are asked, at the same time, to work on corporate regulation (or for Corporate Social Responsibility CSR) and to engage into a sponsorship-, ‘partnership’/multi-’stakeholder’- relationship with the companies to be regulated;
• or when public officials/civil servants sit on boards of corporations or envision to join a TNC after the end of their public function (also known as post-employment Col/’revolving door’ issue)

PS: «Conflicts of interest arising from financial incentives and those that arise from divided loyalty and dual roles often overlap», Rodwin, 2011, op.cit, p. 16
I have drawn this general definition from the definition of physicians’ Col by law professor Marc Rodwin which takes loyalty Col specifically into account:

He says, «Physicians have a conflict of interest when their interests or their commitments compromise their independent judgement or their loyalty to their patients».

Rodwin, 1993, op. cit., p. 9

This generic definition could be used for all kind of professions by specifying the fiduciary/trust taker and fiducie/trust giver: E.g. Civil servants and public officials have a conflict of interest when their interests or commitments compromise their independent judgement or their loyalty to the public etc.

I hope that more attention to this conceptualisation may be given in theoretical and policy debates about the most useful definition on conflicts of interest.

For more details on Rodwin’s conceptualisation of Col, see in particular:

Rodwin 1993, op. cit., pp. 8-10
Rodwin 2011, op. cit., pp. 15-17 (and on financial ties to third parties, pp. 20-21)
Conflict of interest policies are meant to be, above all, preventive policies

Because it is difficult for outsiders to ascertain whether or not financial interests have biased the judgement of e.g. a health professional or civil servant & because «conflicts of interest have the capacity to cause harm»

Marc Rodwin, 1993

Quote by Marc Rodwin (1993), op. cit., p. 9
Even if all **individual conflicts of interest** were adequately regulated, this might not be enough.

This is why the IoM Report also included a chapter on **institutional conflicts of interest**.

This was brought to light by cases e.g. where a medical researcher acted with full integrity but her research institution was too close to pharmaceutical companies to support her when she published a result of a clinical trial that the commissioning pharmaceutical company did not like.
Institute of Medicine IoM Definition (2009)

**Institutional Conflicts of Interest**

"Institutional conflicts of interest arise when an institution's own [secondary] financial interest or those of its senior officials pose risks to the integrity of the institution's primary interests and missions."

Source: For more information on the IoM concept of institutional Col in medicine & for examples where the addressing individual Col is not enough to ensure the integrity of an institution, see summary, pp. 14-15 & chapter 8 *Institutional Conflicts of Interest*, IoM Report, Lo and Field Eds. (2009)

There may be need for debate whether a senior official’s interest should be classified as an institutional Col
"If they are not properly identified and managed, institutional conflicts can undermine the work and reputation of an entire institution, including employees or members who are themselves strictly avoiding individual conflicts of interest."

IoM Report, 2009, p. 14

Note: Others may analyse what the IOM might classify as cases of institutional CoI as cases of institutional corruption/corrosion. More research may be needed about the relationship and differences between these two concepts. For one short introduction to the institutional corruption concept, see Lessig, L. (2013). "Foreword: 'Institutional Corruption' Defined." JLME Special Issue, pp. 553-555.

Core purposes
of conflict of interest regulation

The protection of
1. the integrity of decision-making processes (on other persons’ behalf)
2. the financial independence
3. the trustworthiness of, and public trust, in persons and institutions that are meant to act in the public interest

This «triad» of core purposes (core concerns/aims etc) is stressed e.g. in the work of Jonathan Marks, Marc Rodwin & IBFAN’s & my contributions to the debate on WHO’s draft Framework on Engagement with non-State actors (FENSA)
Col policies & regulation

Key purpose No 1

Protection of

*integrity of decision-making processes*

e.g. of policy-making; decisions on health norms; and standards; regulation of harmful corporate practices; public procurement etc.

*as well as the*

*integrity of institutions*

To assess whether the integrity of a person or institution may have been affected by a Col, you can look e.g. whether there is a

- difference between mandate/missions and practices/policies/work plans (for institutions)
- difference between words and deeds (for persons); or whether there are significant
- contradictions between statements (for persons and institutions)
  (e.g. by checking whether statements made to public interest advocacy groups differ from those made to big business or wealthy private foundations)

For more discussion about integrity and its protection, see Marks, J. H. (2014). "Toward a Systemic Ethics of Public–Private Partnerships Related to Food and Health." *Kennedy Institute of Ethics Journal* 24(3), September
These are not the only issues to be considered. Evaluations of sponsorship arrangements must also include the acceptability of conditionalities that may come with a sponsorship offer (the «strings attached»).

* ‘Capping’ (limiting private sector sponsorship to fixed amounts or percentages of public interest actor/institution financing) is often proposed as a solution to problems that sponsorship-relationship may cause. While capping may be useful in some circumstances, it is a questionable solution for many circumstances (assessments would need to take full consideration of research on the possible ill-effects of sponsorship in conflict of interest and institutional corruption/corrosion literature).

It is known that even small gifts by pharmaceutical companies have been shown to have a significant impacts e.g. in terms of distorting prescribing patterns of physicians. We also know that pharmaceutical companies have long used funding to patient groups to make them lobby/help market on their behalf (a practice which corporate public relations calls ‘third-party’ or ‘two-step’ communication).

Recent research has confirmed long-voiced concerns about problematic effects private sector/venture philanthropy funding of UN agencies in terms of shifting of public policies & agendas, undermining public regulation, shifting mandates of public agencies & ultimately undermining democratic decision-making processes world over.

Would you trust a doctor, nutritionist, health worker, public health advocate, academic, civil servant, public official – or public institution - if you thought they let themselves be influenced by financial ties with health-related industries?

Note: IBFAN refers to the institutional CoI concept and the triad of core purposes of conflict of interest regulation in the attempts to better explain why WHO’s integrity and independence - and ultimately trustworthiness & public trust - is being severely threatened by the way WHO (and global health & nutrition efforts in general) are funded:

For years, there has been a funding freeze of governments’ assessed contributions (core funding that governments are asked to pay and over which the Director-General and the World Health Assembly have control). Around 80 percent of WHO’s operations are now funded by so-called «voluntary» contributions from Member States as well as private sources such as the Bill & Melinda Gates Foundation. The great majority of these contributions are are destined for specific purposes («ear-marked» contributions). The so-called WHO reform which started in 2010 exacerbates this problem by asking WHO to rely, in addition, on corporate sponsorship (in cash and kind).

Concerns over the direction the WHO ‘reform’ and debate over FENSA has taken has prompted civil society groups to (once again) ask to revoke the freeze of Member State contributions to WHO and (other UN agencies). Adequate core funding for WHO can be seen as the most effective way to resolve WHO’s serious institutional CoI. It would liberate our world’s highest health authority from the pressure and temptation to go for problematic funding sources. The price is not high: less than a third of the Atlanta-based Center for Disease Control.


& e.g. Baby Milk Action UK website on the WHO ‘reform’ debate
‘Perceived’ conflicts of interest

Taken very seriously in Col policies
—e.g. in the «reasonable person test»

«The aim [of Col regulation] is to minimize conditions that would cause reasonable persons (patients, colleagues and citizens) to believe that professional judgement has been improperly influenced, whether or not it has been»

Dennis F. Thompson, 2005

1. Persons and institutions in a position of trust must do all they can to explain whether, or not, what outsiders (or concerned insiders) see as a conflict of interest is a an actual Col;
2. Even if the issue turns out to be ‘only’ a perceived Col, there is still a need for public clarification to dispell concerns - and possibly to change, or terminate, a practice or relationship that caused the concern

The «reasonable person test» is used e.g. in Col trainings & ‘toolkits’ for civil servants.
It asks them to reflect whether or not a «reasonable person», after having been given all the necessary information, may perceive a relationship or situtation as a problematic Col.

NB: Perceived Cols are sometimes also called ‘apparent’ Cols. It would take more time to disentangle how these concepts relate and differ.
I suggest for public interest actors to use the term ‘perceived’ Col since it best captures the notion that this should be, above all, about taking care of what concerned outside (and inside) persons may see as a Col. It may better prevent that decisions about how to address such perceptions are left to inside actors who may try to side-line or silence those who voice the concerns.


For some information on appearance of Col, see also Peters & Handschin, op-cit, p. 366
A problem today is that many sponsorship-relationships are bearing other names today, of «partnership» is the most problematic since it implies a symmetry that does not exist.

- Opinions often diverge (partially because some of the actors in the discussion may already be affected by unresolved Cols)
- **No details on assessing Col** in this presentation - **just some reflections on «sponsorship relationships» with health related industries** who have an interest in expanding their markets and influencing policies (which deal e.g. with the regulation of problematic corporate practices)
Peoples’ perceptions concerning financial Col

In medieval times, people were entertained by strolling musicians. Whoever paid the price could choose the music. This proverb means that whoever pays is in charge.

NB: If you want to use examples from your culture, use e.g. google «images» & put relevant saying in your language
“there’s no such thing as a free lunch.”
«Only in a mousetrap can you find cheese for free»

....as the Russians would say

To take or not to take? 😊...that is the question

Example 1:

Is corporate funding for medical education acceptable?

There continues to be much debate about benefits versus risks of corporate sponsorship from health related industries for e.g. medical continued education and conferences:

- Many medical associations say they can ensure that this will not bias their judgement (and thus argue e.g. for limiting the amount of funding received - so-called «capping» - of the contributions; possibly combined with funding guidelines)
Is corporate funding for education acceptable? (ctd)

- Research has shown a) that persons with conflicts of interest tend to underestimate the extent to which CoI bias their judgement in favour of the sponsor*; and b) that even small gifts create reciprocity-relationships. The receiver often feels obligated to give something in return.
- Some health professionals this research seriously when they argue that limiting amounts will not solve the problems that certain sponsorship-relationships create. E.g. physicians of the International Society for Social Pediatrics and Child Health (ISSOP) asserted:

  “Sponsorship from the industry of paediatric education and conferences inevitably compromises the duty of paediatricians and other child health professionals to promote breast feeding.”

* The underestimation of how CoI may influence one’s judgement is called «the bias-blind spot»

- as mentioned earlier, research has shown that even small gifts, such as pencils, from pharmaceutical companies can influence the prescribing behaviour of physicians.
As a German saying goes «small presents maintain the friendship»

It is not necessarily the value of the financial contribution that influences us, but these «gifts» may create a feeling of gratitude and reciprocity. We have been socialised to give something in return for gifts – and our unconscious mind may not make a difference between gifts made out of genuine friendship and those that are made in order to gain a marketing or political advantage.
For some sources: see e.g. IoM Report, 2009, p. 170 ff.

See also: ISSOP (2014). "Paediatricians call on baby feeding industry to stop sponsoring medical education: Conflict of interest is damaging to support of breastfeeding.” Press release, 15 May

“No Free lunch”-type of pledges have been taken up by physicians in various countries, see e.g.
http://www.nofreelunch.org/;
http://www.mezis.de/;
http://www.prescrire.org/Fr/12/38/0/0/About.aspx;
http://www.prescrire.org/Docu/Archive/docus/charteNonMerci.pdf
Is corporate funding for education acceptable? (ctd.)

Others still point out that the funding for health professional «education» comes from marketing budgets. Debates about Cols and risk management with respect to corporate sponsorship may divert attention from the fact that corporate sponsorship is meant to buy influence!

«Drug companies are not providers of education, and they cannot be. No laws, regulations or guidelines should be based on the idea that they are»

Marcia Angell

Of course, the same can be said about Big (Infant) Food and Big Soda

See also Marion Nestle (2015), Chapter «Softball» Marketing Techniques: recruiting allies, co-opting critics, Soda Politics: Taking on big soda (and winning), Oxford University Press, Oxford New York, pp. 231-267 & p. 191 on deflecting criticism, eliciting loyalty
Example 2: How to assess sponsorships from companies whose practices should be regulated?

Major question by those who want to address commeriogenic roots of worldwide obesity ‘epidemic’

Why not look at the WHO Tobacco Convention Article 5.3. & associated guidelines?

“[In] setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”....

See Guidelines for Implementation of article 5.3. for underlying argumentation and suggestions of action: e.g.

Para 4, point 22: “Payments, gifts and services, monetary or in-kind, and research funding offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest. Conflicting interests are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal interest to influence official responsibilities as recognized in the International Code of Conduct for Public Officials adopted by the United Nations General Assembly and by several governmental and regional economic integration organizations”

NB: the quote is somewhat confusing since the “conflicting interest” in this quote actually refers to conflicts of interest. http://www.who.int/fctc/guidelines/article_5_3.pdf

See also Guidelines for Implementation of Article 13 of the WHO Framework Convention on Tobacco Control which includes guidance on sponsorship apps.who.int/iris/bitstream/10665/80510/1/9789241505185_eng.pdf, pp. 93-114

See also material from the infant food arena, such as Sponsorship and Conflict of Interest, Position Statement of IBFAN http://ibfan.org/upload/files/Sponsorship-and-conflicts-of-interest.pdf
Frequent argument: «But food is not like tobacco!»

BIG Food and BIG Soda are like infant food, pharmaceutical and tobacco TNCs when it comes to their combatting legally-binding regulation of marketing harmful practices.

The issue is not just whether a product is harmful

A Col exists when a corporation has a «financial interest in the outcome» of a public-private interaction

Marc Rodwin, 2015
II. Conflicts of interest in global food & nutrition governance

*Cols no problem?*

What about ‘stakeholder governance’ in the upcoming

**United Nations Decade of Action on Nutrition**

(2016-2025)
UN Decade of Action on Nutrition
(2016-2015)

was proclaimed by UN General Assembly
in April 2016
after «almost 2 years of intense negotiations»

following the

the Second International Conference on Nutrition (ICN2)

held in Rome in 2014

Quote on intense negotiations: FAO Press Release UN General Assembly proclaims Decade of Action on Nutrition
UN Decade of Action on Nutrition

WHO and FAO see UN Resolution as a “leap forward in galvanising action on nutrition”

«Today's resolution recognises the need to eradicate hunger and prevent all forms of malnutrition worldwide. The Decade of Action on Nutrition will provide an umbrella for a wide group of actors to work together to address these and other pressing nutrition issues.”


Quote nb 1 in WHO and FAO press releases; quote nb 2 in FAO release


1. The question is: will the participation of transnational corporations as «stakeholders» (moreover coupled with to the idea to rely on their voluntary contributions to fund this important process) not impede what this Decade is meant to achieve: «eradicate hunger and all forms of malnutrition» (my emphasis)

2. The Resolution on the United Nations Decade on Nutrition does not reflect the voices from within the Civil Society Mechanism (CSM) of the CFS which have clarified that the CFS is not what is commonly understood under a multi-stakeholder mechanism. It seems, however, to have taken some note of critical voices that SUN should not be made into THE coordinating body of nutrition efforts by not mentioning it by name.

“invites Governments and other relevant stakeholders, including international and regional organizations, civil society, the private sector and academia, to actively support the implementation of the United Nations Decade of Action on Nutrition, including through voluntary contributions, as appropriate” (para 4)

**Corporate ‘stakeholder’ support and finances welcome - without mention of Cols in the Resolution?**

Or could the word “appropriate” be interpreted to also include taking into account Col thinking and what would this mean?
UN Decade of Action on Nutrition will build on the ICN2 Framework of Action (ICN2 FFA)

The FFA list under its actions of how create an «enabling environment for effective action»
the recommendation to «...strengthen and establish, as appropriate... multi-stakeholder mechanisms for food security and nutrition to oversee implementation of policies, strategies, programmes and other investments in nutrition»


Para 3 of the Resolution on the Decade of Nutrition specifies the link, by calling upon FAO and WHO to «[t]o identify and develop a work programme based on the Rome Declaration and Framework of Action, along with its means of implementation for 2016-2025»

Not explored in my discussion is the links which are also made with the 2030 Agenda for Sustainable Development (in particular SDG 2, 3 & 17) and the Action Agenda of the Third International Conference on Financing for Development. These would also warrant further exploration from the angle of how to strengthen safeguards for public interests and prevent erosion of democratic governance.
The ICN2 FFA Recommendation No 3 specifies:
«Such [multi-stakeholder] platforms may be needed at various levels, with robust safeguards against abuse and conflicts of interest» (para 44)

Impression of readers:
Robust Col safeguards must exist

See ICN2 Framework for Action (ICN2FFA), p. 2. Full quote says under heading:

Recommended actions to create an enabling environment for effective action

....

“Recommendation 3: Strengthen and establish, as appropriate, national cross-government, inter-sector, multi-stakeholder mechanisms for food security and nutrition to oversee implementation of policies, strategies, programmes and other investments in nutrition. Such platforms may be needed at various levels, with robust safeguards against abuse and conflicts of interest.”

**WRONG!** Findings of a review on Cols in global public governance

Public-private partnerships

[& multi-stakeholder initiatives/alliances]

“increase the likelihood of new forms of conflicts of interest”

They “erode the public-private distinction”

Yet, in 2012, Col regulation for the UN system was still in its “infancy”

& “attempts to harmonise it... only beginning”

Professor Ann Peters 2012


See also discussion in the book section: *A main challenge: the blurriness of public and private* which uses the «ongoing privatization» of WHO as example of the problems, briefly touches on PPPs and shows that much more theoretical work is needed, pp. 409-411
There is **no coherent, effective, Col regulation** with respect to UN-business relationships & global public-private ‘partnerships’ (PPPs) & multi-stakeholder’ initiatives (MSIs)

The Col Reference Note developed by SUN **is not** addressing this gap.

For example, in 2013 WHO admitted at the informal consultation with Member States, NGOs and private sector, which IBFAN and I attended, that much of whatever Col guidance existed on paper in WHO was not implemented in practice.

At the time of writing of this presentation, there are still huge questions about WHO’s conceptualisation of Cols (WHO’s draft *Framework for Engagement with non-State actors*, for example, is still being debated by concerned Member States for its weaknesses).

See e.g.
Richter, J. (2015). "Time to debate WHO’s understanding of conflicts of interest." BMJ RR (22 October) [http://www.bmj.com/content/348/bmj.g3351/rr](http://www.bmj.com/content/348/bmj.g3351/rr)


For updates on the situation see IBFAN/Baby Milk Action, which has links to open letters, articles and other relevant websites (e.g. Third World Network)
Preventing and Managing Conflicts of Interest
SUN Reference Note (2014/15)

Is it providing «robust» CoI regulation in MSIs?
or legitimizing multi-‘stakeholder’ approaches and sidelining critics?

Analysis of SUN CoI Reference Note
A basic discourse analysis:
What is said, and how?
& what is left out? (significant omissions)

See http://scalingupnutrition.org/resources-archive/preventing-and-managing-conflicts-of-interest

MSI = Multi-‘stakeholder’ initiative - an overall term for multi-‘stakeholder’
dialogue, alliance or forum as well as (coordinating) multi-‘stakeholder’
umbrella/»big tent» etc.)

NB: It would be better to use a more neutral word such as multi-actor alliance
(MAA), which does not carry the connotations associated with the definition of
stakeholder in the current dominant discourse.

For discussion on how the meaning of the term stakeholder was changed in a
Novartis-sponsored book so that TNCs could become legitimate ‘stakeholders’ in
discussions on public affairs, see Richter, J. (2002). Dialogue or engineering of
consent? Opportunities and risks of talking to industry. Geneva, International Baby

The Global Social Observatory (GSO) Consultation Process on Conflict of Interest in
the Scaling Up Nutrition Movement Synthesis Report, January 2015
on SUN’s website affirms: «The GSO-SUN Reference Note and Toolkit on
Preventing and Managing Conflict of Interest represent a
significant advance for framing the issues around conflict of interest for the SUN
Movement and provide a valuable resource for SUN Country Focal Points and
other stakeholders” (under Going Forward, p. 5), http://scalingupnutrition.org/wp-
03.03.2015
Preventing and Managing Conflicts of Interest
- SUN Reference Note (2015)

How are Cols defined?

• “An organizational or institutional conflict of interest arises when pursuit of an organization’s interests, whether ‘private’ or secondary, has the effect of compromising, interfering with, or taking precedence over the objectives of the joint endeavour.” (para 24)

• “[t]he private or secondary interests of any participating individual should not supersede the primary purpose of establishing synergy between organizations for the common goal of promoting improved nutrition “ (para 19 - all quoted paras refer to the 2015 version)

Note: The paras refer to the SUN Reference Note on Col, version of January 2015 - they differ from that of the March 2014 version which were quoted in previous critiques
Remember the IOM definition?
SUN Reference Note: **Wrong primary mandate**

The overarching ‘primary interest’ of a public-interest organisation or alliance is/should be the **public mandate** of an organisation or alliance.

Reading SUN’s Col Reference Note, the overarching purpose of Col regulation appears to be the protection of **synergy creation** around the allegedly «**common goal of promoting improved nutrition**» in **joint endeavours** between public-interest and private-sector actors.
Can TNCs be expected to fully support the «common goal of improved nutrition»?

And where is clear reference to the public mandate - the ‘primary interest’ -

to protect, respect and fulfill peoples’ human rights
to adequate food and nutrition, and freedom from hunger?

For interesting reading about the differences between a holistic, human-rights based approach to adequate food and nutrition and currently promoted reductionist approaches and the avoidance of human rights language, see Valente, F. (2014). "Towards the full realization of the human right to adequate food and nutrition." SID 57(2): 155-170.
SUN’s Reference Note on conflicts of interest does not:

examine whether the inclusion of corporations in SUN’s Lead Group constitutes a severe, unacceptable Col

nor does it question the notion of turning every actor into a «stakeholder» in the food and nutrition arena*

* in particular as soon as a country is declared to be a «SUN country» and public interest actors are encouraged to feel part of the SUN «Movement»
SUN’s CoI guidance dismisses concerns of critics by portraying them as follows

“Some stakeholders argue that the potential for conflicts among certain groups of stakeholders is so great that those stakeholders should be automatically be excluded from engaging in the the SUN movement” *

“This Reference Note, in contrast, assumes that good governance is inclusive”
(para 11, January 2015)

*This is how SUN ‘s CoI Reference Note refers to concerns of IBFAN & other public interest actors over the inclusion of TNCs as ‘partners’ and ‘stakeholders’ in SUN’s Lead Group and in national nutrition decision-making and programme implementation (quotes of this slide, CoI Reference Note, para 9 of version of March 2014 and para 11 of the January 2015 version, scalingupnutrition.org/wp-content/uploads/2014/05/Reference-Note-and-Toolkit-English.pdf, accessed 13.04.2016)

In conjunction with the Gates-funded SUN Evaluation Report, SUN’s CoI Learning Exercise moreover disparages and sidelines critics, see e.g. Richter, J. (2015). “Conflicts of interest and global health and nutrition governance - The illusion of robust principles.” BMJ RR, 12 February

And «with this assumption and an emphasis on building trust to permit such inclusiveness [this Note] describes ways for governments to manage potential and actual conflicts of interest of stakeholders who may be participating in the Movement.»

«Prohibiting any individual entity – or group of stakeholders – from engaging in the SUN Movement at the country or global level should be a last resort» (para 11)

Actually, promoting «vigilance» and maintaining/restauring «arms-length distance» would be the most important emphasis in training for appropriate interactions with big corporate actors. These emphases are often dismissed by portraying them as an unreasonable distrust of TNCs based on an alleged view of TNCs as «ennemies». Such emphases, however, do not mean that there should be no interactions between private sector and public sector actors – but they mean that they must be appropriate, in particular when it comes to interactions with powerful economic actors and personalities.

For a call to revalue a healthy distrust by «more diligently and more deliberately institutionalize distrust», see the chapter Restoring Distrust by Professor Thompson, D. F. in his book (2005). Restoring responsibility: ethics in government, business and healthcare. Cambridge, UK, Cambridge University Press, pp. 245-266
Is good governance automatically “inclusive” of TNCs?

Rise of public-private partnership/multi-stakeholder paradigm
• decreases spaces for regulation (legal & social)
• erodes distinctions – also in our minds

TNCs = ‘stakeholders’ in public affairs?

Concern of IBFAN:
Soon there may be no more rule-setting (governance)
spaces in public health & nutrition outside
‘stake-holderised’ arenas
i.e. which include TNCs as the indispensable,
in fact privileged, ‘stakeholders’ in public health matters

This notion will be further legitimized if WHO Member States adopt the Framework
of Engagement with non-State Actors (FENSA) without specifying that an
‘engagement principle’ of ‘inclusiveness’ cannot apply to all non-State actors
The principle of inclusiveness was meant to grant citizens their legitimate right to
participation.
However, it has since been promoted as applying also to powerful business actors
and philanthropic foundations.

During the WHO Technical consultation: "addressing and managing conflicts of
interest in the planning and delivery of nutrition programmes at country level”,
in October 2015, Col experts pointed out that the principle of “inclusiveness” is not
an appropriate principle for Col regulation.
Recusal or exclusion of a conflicted person, for example, is one of the ways to
address individual Cols.

See draft report
PS: The final report should be available soon for the May 2016 World Health
Assembly
Sub-suming public-interest with business-interest actors under the name ‘stake-holder’ **blurs important distinctions**
What about differences in money & power?

Many thanks for the cartoon by Jacqueline de Montaigne (based on idea of Lida Lhotska)
Distinction No 2.
Fundamental divergences between actors’
‘primary interests’
“The commercial interests of multinational food companies inevitably diverge in fundamental ways from those of public sector agencies responsible for public health. We can recognize these divergent interests without demonizing industry, and we should do so. When public health officials downplay the divergence, they imperil their public health mission, and the integrity of their institution.”
Jonathan Marks, 2014

What about differences of fiduciary mandates?

In my experience, action groups often refer to downplaying of this difference as neglect of seeing what they call an «inherent conflict of interest» and attempts to clothe the «wolf in a sheep skin»

http://www.bmj.com/content/349/bmj.g5457/rr/777767
In fact: What is «governance»?

Big word – why not use simple analogies?

- Governance comes from Greek *Kybernan* = ‘steer a ship’ (French: “governail”)
- International relations theorist James A. Rosenau 1998: “the process ‘whereby an organisation or society steers itself’”
- Commission on Global Governance, 1995: “*governance is the sum of the many ways in which individuals and institutions, public and private, manage their common affairs*...”
- In short: Rule setting, formal and informal

For more details, see Judith Richter, Chapter 2 *Democratic global governance: Regulation of the Corporate Sector*, 2001, op. cit, pp. 28 ff.
Democracy is above all about working for the people and with the people.

If the policy discussions on infant food (and obesity-related) issues continue to include TNCs as ‘stakeholders’ in the name of the promoted principle of ‘inclusiveness’, regulation of harmful corporate practices will be weakened or not forthcoming. The course is then set by and for TNCs - in direction of market expansion.

The stakeholder and partnership discourse and ill-regulated relationships will also erode another essential part of the system of ‘checks and balances’ in democratic societies: public interest actors’ arms’-length distance to corporations.

**Commission on Global Governance 1995:**

Global governance mechanisms must be **“more inclusive and more participatory”** – that is, **more democratic** than in the past.” They **must subject powerful economic actors** to the **“rule of law within global society.”**
Key questions on «good» governance

Who steers the boat, who sets the rules?
And into which direction?

Are we going towards corporate-led & venture philanthropy-led governance?
What will be the result?
The nature (and fiduciary mandate of shareholder owned) Big SNACK & infant food TNC’s is to expand their markets

........................................................................................................................

This, and the following 2, pictures were taken from Nestlé’s website. The first paragraph on this page proudly states «The first Nestlé floating supermarket will set sail on the Brazilian Amazon to extend its reach to over 800,000 customers…” See www.nestle.com/Media/NewsAndFeatures/Nestle-sails-supermarket-on-the-Amazon & press release www.nestle.com/asset-library/documents/media/press-release/2010-february/nestl%C3%A9%20brazil%20press%20release%20%20a%20bordo.pdf, both accessed 08.03.2016

With thanks to Tim Lobstein, Director of Policy World Obesity Federation for raising attention to these pictures in his presentation Food Corporations : What do food corporations say and what do they do? Oslo, Norway, 2015

For comment by public health attorney Michèle Simon, see
www.alternet.org/story/147446/nestle_stoops_to_new_low_launches_barge_to_peddle_junk_food_on_the_amazon_river_to_brazil's_poor
And what did customers find on this boat...?
III. What can be done to protect public interest actors’ capacity to hold TNCs accountable?

1. Call for policy measures to «identify, assess, and adequately address CoI in the global food and nutrition arena»

by e.g. reminding public agencies & UN Member States of the


You can argue that Policy measures to «identify, assess, and adequately address CoI are an essential part of «good democratic and evidence-based governance».

.................................................................

Above formulation of the key demand is a shorter expression of what the OECD Guidelines define as the duty to set up effective procedures for the «identification, disclosure, management and promotion of the appropriate resolution of conflict-of-interest situations» OECD 2003, Developing a Framework, p.15

The OECD has now 34 member countries which are held to build up systems that abide by the OECD Col Guidelines and its’ principles. One could argue that these countries should, at the very least, not obstruct attempts to build effective and adequate CoI policies within UN agencies. Nor should they promote policies that increase conflict of interest situations http://www.oecd.org/about/membersandpartners/

NB: The OECD Col Guidelines have many useful provisions. However, if you use them, be aware that referring to them also carries some risks which will need to be addressed. For example, the OECD Col Guidelines advise to involve the business sector in a «partnership for integrity» which would also include their involvement in «the elaboration and implementation of the conflict-or-interest-policy for public officials» so that the result would be «mutually acceptable solutions», OECD, 2003, op.cit, p. 36
Public interest advocates can argue that conflict of interest policies and regulation are neglected task in the building of the international rule of law.

Col policies are acknowledged part of public and administrative law (OECD countries). They are part of the system of ‘checks and balances’ in democracies.

In other words, they could argue that “good governance”, rule-setting, needs to include Col & other safeguards to protect the integrity, independence, and trustworthiness of, and public trust in, our public institutions, health and nutrition professionals and others who work in the public interest.

Note: Col are only one part of needed public interest safeguards in the health and nutrition arena. For ways to safeguard When former WHO Director-General promoted the partnership model, she promised to develop other elements, see box 1, p. 4 in Richter, J. (2004). "Public-private partnerships and Health for All: How can WHO safeguard public interests?" GASPP Policy Brief(5): 8.
Core principles which public officials should observe when dealing with CoI matters

• «Serving the public interest
• Promoting individual responsibility and personal example;
• Engendering an organisational culture which is intolerant of conflicts of interest
• Supporting transparency and public scrutiny» !!!

OECD Guidelines (2003), Executive summary, p. 16, order inverted

Note: Transparency, is indeed an indispensible precondition for detecting and assessing CoI.
Conflict of interest experts warn, however, that transparency measures may be used to prevent the building up of an full, effective system for addressing CoI.
In other words: focus on transparency may be used to build up an ill-conceived policy which may actually increase, rather than prevent or appropriately resolve, conflicts of interest and risks of undue influences.
Duty of the leadership of a public organisation

• To ensure that «decision-making procedures at all stages can be audited for integrity...»;
• To ensure that conflict of interest policies are being set up, monitored, and enforced; and
• To «create an organisational culture where dealing with conflict-of-interest matters can be freely raised and discussed»

Source: OECD Summary & Guidelines, p. 18 & 27 & 37; 35
The last point, of course, includes the duty to build up adequate whistleblower protection mechanisms within public institutions

Building up a system of public conflicts of interest policies also includes states ensuring that also corporations have adequate whistleblower protection mechanisms
2. How to raise attention to conflicts of interest issues?

Civil society actors need **not** be experts on CoI

Use the «reasonable person» position & argument
Participants at the 2015 IBFAN Capacity Building Workshop on Col suggested to use the label «screaming» conflict of interest for drawing public attention to serious Cols which are being neglected (such as the presence of corporate representatives on the govermental delegations at the Codex Alimentarius). For concern about participation of TNCs in global policy debates on obesity-related diseases, see also Conflicts of Interest Statement of Concern http://coicoalition.blogspot.cz/, accessed 22.04.2016

There is a debate within the right to health and adequate food and nutrition movement whether to spend energy on working on Col – and how much, seen the limited ressources. It is certainly important to keep in mind the bigger picture. It may be very useful to debate whether, e.g. the call for measures to detect and address institutional Col could not be better linked to debates on how our institutions are being eroded from within and outside (something I would call «institutional corrosion», but which the literature currently calls «institutional corruption»).

I hope that this presentation, which tries to give a clearer picture of the essence of conflict of interest policies, can also help to prompt more debate and academic work on the question above.
How to persuade public-interest actors to join hands
to work for effective CoI policies

for all public actors in the health and nutrition arena
- including their own organisation -
where needed?

Sponsorship relationships,
public-private ‘partnerships’ & multi-’stakeholder’ initiatives,
and long-term corporate divide-and-rule strategies
have driven a wedge between public interest actors.

For the start of concerted strategies of TNCs to divide critics who work for
international legally binding regulation see:

J. Richter, Engineering of Consent: Uncovering Corporate PR. Briefing paper. Dorset,
The CornerHouse (1998)
(which draws on Public relations, politics and public pressure: Recovering the
history of corporate propaganda, my MA in Development Studies)
These strategies are still employed today and it may thus be worthwhile to look at
them (and the material of others who have continued observing) to avoid being
used in corporate strategies to undermine regulation
As WHO stressed in its *Fact Sheet on Obesity and Overweight*:

«Once considered a high-income country problem, overweight and obesity are now on the rise in low- and middle-income countries... Overweight and obesity are linked to more deaths worldwide than underweight.”

Source: WHO Fact Sheet No 311, Updated January 2015

In addition, public-interest actors concerned about Col could also call for independent assessment of the economic impacts of undealt with Cols in food and nutrition (e.g. by linking it to the cost of undernutrition- and obesity-related diseases, nationally and globally)
Building CoI regulatory systems
Whose duty is it?

• Concerns of corporate accountability- and other civil society actors should be taken seriously
• The building of public CoI regulatory systems, however, is not their task
• Such work needs the collaboration of many knowledgeable and committed public-interest actors, including academia
• Ultimately, it is the role of our governments and the UN to strengthen - not erode - the Rule of Law

The building of coherent and effective CoI regulation and other public interest safeguards is an urgent task if the DECADE OF ACTION ON NUTRITION is to succeed!

In addition, health professional organisations, public interest NGOs, and academic institutions would need to check the adequacy of their own organisational CoI policies and other public interest safeguards. Building effective safeguards may not be enough. Marc Rodwin responded long ago to concerns that CoI regulation in the medico-industrial complex may become overly costly and burdensome as follows:

*The most effective solution would be to change the practices of the institutions that give rise to conflicts of interest, rather than to place the onus on physicians [civil servants etc.] to change their conduct."


When the UN and WHO leadership started urging our governments to take the path towards «partnership» approaches with industry and rich foundations some guidance was given, but neglected in much of the consecutive practice. The following quote may help reclarify current thinking:

"The overriding purpose of cooperation between the United Nations and non-state actors should be to enable the Organization to serve Member States and their peoples more effectively, while remaining true to the principles of the Charter. Cooperation should be regularly assessed against those objectives. As such, cooperation should be viewed as a means of achieving United Nations goals and enhancing performance, not as an end in itself."

*Cooperation between the United Nations and all relevant partners, in particular the private sector. Report of the Secretary-General to the General Assembly, UN 2001*
Acknowledgements

IBFAN-GIFA and IBFAN Asia thank the Swedish International Development Cooperation Agency (Sida) and the Norwegian Agency for Development Cooperation (NORAD) for their support to this area of work, including the development of this tool, as part of the overall programme implementation. Additional support for this work was also provided to IBFAN-GIFA by ICCO Cooperation.

The author wishes to express her thanks to members of the IBFAN network, in particular from IBFAN-GIFA, IBFAN Asia/BPNI and Baby Milk Action for their valuable support and comments in the preparation of this tool.

Last but not least, the author owns great thanks for their input and readiness to discuss this complex issue to the legal experts, Professors Marc Rodwin and Jonathan Marks. Any potential shortcomings of this annotated presentation, however, are mine.
Copyright: © 2016 Judith Richter
Public interest actors are welcome to use and distribute this slide show or reproduce its slides, provided the author and source are credited.

Citation: