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CIVIL SERVICE BUREAU CIRCULAR NO. 2/2004

Conflict of Interest

To : Directors of Bureaux c.c. Judiciary Administrator
Permanent Secretaries Commissioner, Independent
Heads of Departments Commission Against Corruption
Secretary, Public Service Commission

(Note: Distribution of this Circular is Scale A. It should be read by all officers. A Chinese version is attached.)

This Circular sets out the requirements to avoid conflict of interest, and the course of action to be taken by an officer when he faces a real or apparent conflict of interest situation. It also sets out the role of supervisors in managing conflict of interest. CSB Circular No. 19/92 is hereby superseded.

2. The Administration is committed to maintaining a high standard of integrity and conduct in the civil service. A fundamental rule underlying civil service integrity is the need for officers to avoid any real or apparent conflict of interest. All officers are reminded that they are required to make a conscious effort at all times to avoid or declare, as appropriate, any conflict that may arise or has arisen. Failure to take the necessary steps to avoid or declare a conflict of interest situation may constitute misconduct.

Conflict of Interest

3. A conflict of interest situation arises where the "private interests" of an officer compete or conflict with the interests of the Government or the officer's official duties. For the purposes of this Circular, "private interests" include the financial and other interests of the officer himself; his family or other relations; his personal friends; the clubs and associations to which he belongs; any other groups of people with whom he has personal or social ties; or any person to whom he owes a

favour or is obligated in any way. There are circumstances in which a tie of kinship or friendship, or some other association or loyalty which does not give rise to a financial interest, can influence the judgement of a civil servant in discharging his official duties, or may reasonably be perceived as having such an influence. An officer's duty to declare a conflict of interest therefore goes beyond the disclosure of interests that are definable in pecuniary terms.

4. The Administration has no wish to impinge upon legitimate loyalties owed by an officer to his family, relations, personal friends, etc. However, it is essential that all civil servants are honest, impartial and objective in carrying out their duties and in their dealings with members of the public and with their staff. Officers must avoid situations which might compromise (or be seen to compromise) their personal judgement or integrity at work or lead to conflict of interest. A civil servant must not subordinate his official duty to his private interests, nor put himself in a position where his official duty and private interests conflict. He must not use his official position (or any privileged information made available to him in his capacity as a civil servant) to further his private interests or those of his family, friends or associates nor put himself in a position which gives rise to suspicion that he has done so. He must not allow the pursuit of his private interests to interfere with the proper discharge of his official duties, such as engaging in an occupation or undertaking which might conflict with the interests of the department he works in.

5. An officer should -

- (a) refrain from acquiring any investment or any financial or other interest which may lead to a conflict of interest with his official duties;
- (b) refrain from taking part in the deliberation, decision-making, investigation or enforcement process in connection with any matter in which he has a private interest;
- (c) avoid putting himself in a position of obligation to his subordinates or any person who has or may have official dealings with his department;
- (d) decline to provide assistance, advice or information to relations, friends etc. in connection with his work where this would give the recipient an unfair advantage over other people. All legitimate requests for assistance, advice and information should be referred to the proper subject officer to be dealt with in the normal way; and
- (e) report to his superior officer any private interest that might be seen to compromise his personal judgement in the performance of his duties.

6. Failure to avoid or declare a conflict of interest may render an officer liable to disciplinary proceedings and, in certain circumstances, criminal proceedings

including prosecution under the common law for misconduct in public office. Depending on the gravity of the offence, it may result in an officer's removal from the service.

Common areas in which a conflict of interest may arise

7. Set out in paragraphs 8 to 18 below are some of the common areas in which a conflict of interest may arise between an officer's official duties and his private interests. They include -

- (a) use of discretionary power;
- (b) use of official position;
- (c) use of official information;
- (d) position of obligation;
- (e) entertainment;
- (f) investments; and
- (g) outside work and activities.

To illustrate the situations which officers are well advised to guard against, examples have been included in the Annex to this Circular under each of the above headings. *The examples cited in the Annex are of course by no means exhaustive and should in no way be taken as such.*

(a) Use of Discretionary Power

8. Officers called upon to exercise discretion in discharging their duties are in a position of trust in relation to the public, and, for those who are supervisors, in relation to their colleagues. They should be impartial and objective in the conduct of official business. Decisions must be made on the basis of merit and for good reason, free from any improper influence. They should refrain from taking part in decision-making that may be affected by their private interests.

(b) Use of Official Position

9. Officers should not use their official position to further their private interests, nor accord preferential treatment to organisations or persons with whom they have connections. They should not use or permit the use of their Government position or title or an authority associated with their public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit to himself or his relations, friends or associates. They should not ask or direct any subordinate to perform any act or to provide service other than those legitimately required in the performance of official duties. Nor should they use their Government position or title in a manner that could reasonably be construed to imply that the Government/department sanctions or endorses their personal activities or those of another.

(c) Use of Official Information

10. Officers may have access to or control of classified or market sensitive information on matters such as strategic plans; proposed infrastructure; regulatory schemes under contemplation; licensing yardsticks; and tender assessment criteria; etc. by virtue of their official position. They should not use or disclose such information to benefit their private interests. An officer in senior position in the Government has a greater chance of having direct or indirect access to classified or market sensitive information by virtue of his post or daily contacts. They should be particularly mindful of possible conflict of interest as perceived by members of the public. A directorate officer should refrain from engaging in private financial transactions in connection with matters on which he might be reasonably suspected of having knowledge of classified or market sensitive information that could be turned to private gain.

11. The importance of maintaining a level-playing field in public administration could not be over-emphasised. Officers should decline requests for information or advice from their relations or personal friends which may, if entertained, give their relations or personal friends, etc. an unfair advantage over other persons, e.g. in bidding for a government contract; in making investments in shares or real estate; or in obtaining a licence or approval from the Government. Legitimate requests for information or advice are to be referred to the relevant subject officer to be dealt with in the normal way. Where the officer approached is himself the subject officer, he should refer the matter to his supervisor. If his supervisor considers that the subject officer may deal with the matter in the normal way, then a file note must be made by the supervisor to record his instruction, the advice given to the person and the relationship between the subject officer and the person concerned.

12. Disclosing classified information without authority, apart from being a disciplinary offence, may lead to criminal prosecution in certain circumstances.

13. Officers who are involved in government procurement (including in particular tender preparation, evaluation and selection) are reminded of the guidelines stipulated in Financial Circular No. 9/2003 and Stores and Procurement Regulations 180-195 on "Avoiding Conflict of Interest in Government Procurement".

(d) Position of Obligation

14. Officers who place themselves in a position of obligation to others may later be asked to return the favour by providing advice, assistance, or information which would give (or be perceived as giving) the recipient an unfair advantage over other people. Officers should therefore avoid placing themselves in a position of obligation to any subordinate, any company/organisation, or any member of the public with whom they have, or are likely to have, dealings in their official capacity. As a general rule, they should not accept from these persons any advantage (including free

service and favour), excessive entertainment or benefit as this could lead to embarrassment in the discharge of official duties or bring the government into disrepute. They should not indulge in any game of chance for money or money's worth with, or borrow money from, any subordinate. Borrowing money or soliciting/accepting certain advantages from subordinates or persons with whom they have official dealings may constitute an offence under section 3 of the Prevention of Bribery Ordinance ("POBO"). Detailed guidelines on acceptance of advantages are given in CSB Circulars No. 15/2002 and 16/2002.

(e) Entertainment

15. Entertainment when offered by way of a favour is not of itself an advantage as defined in section 2 of the POBO. However, the acceptance of free food, drink, show, etc. may, by reason of its nature and the circumstances in which it is given, go beyond just being a favour (i.e. a gratuitous service or courtesy, free of obligation to, or by, both the giver and the receiver) and becomes an advantage if it falls within one of the other categories that make up the definition of advantage in section 2 of the POBO, such as "a discharge of an obligation to pay". In other words, the acceptance of free food, drink, show, etc. is capable of becoming an advantage the acceptance of which renders the officer liable to prosecution under the POBO.

16. Officers should not accept invitations to meals or entertainment that are excessive in nature or frequency, or are inappropriate (e.g. from persons with whom they have direct official dealings), or are undesirable (taking into account the character of the host), so as to avoid being placed in a position of obligation or giving rise to the perception that their impartiality might be compromised. Failure to do so may bring their department or the government into disrepute. Detailed guidelines on acceptance of entertainment are given in CSRs 431 to 435 and CSB Circular No. 16/2002. Officers are reminded that acceptance of entertainment otherwise than in accordance with these regulations and guidelines or any supplementary rules prescribed by their heads of department, or entertainment which has led or could lead to a conflict of interest, may render them liable to disciplinary action.

(f) Investments

17. Officers should not acquire any investment which may lead to a conflict of interest with their official duties. They should report private investments in accordance with the guidelines laid down in Civil Service Regulations (CSRs) 461 to 466 and CSB Circular No. 9/2001. They should also observe any supplementary guidelines that may be issued by their bureau/department to govern the declaration of investments and pecuniary interests.* In addition, they should report to their supervisor immediately if they are called upon to deal with any matter which may affect (or may reasonably be seen to affect) their investments or those of their spouse, or those of a relation or any person acting on their behalf. In case of doubt as to whether an investment should be declared, they should consult their supervisor.

(g) Outside Work and Activities

18. Officers must not engage in outside work or any other outside activity that may give rise to any conflict of interest with their official duties. They are required to apply for approval for undertaking outside work in the circumstances set out in CSRs 550 to 564. In performing outside work, they should not use departmental resources, stationery, equipment or official information without prior approval. Any officer who takes up outside work without prior approval in accordance with the regulations may be subject to disciplinary action. In particular, no professional or assistant professional officer may undertake paid outside work in his profession either by way of private practice or as a paid employee, except for teaching work or where the work is clearly in the public interest and *with approval*. An officer who is about to resign or retire should also be aware of the conflict of interest that may arise between his loyalties to the Government and those to any person or organisation he intends to work for after leaving the service.

Declaration and Avoidance of Conflict of Interest Situations

19. Officers should declare to their supervisors all relevant interests which may or may be seen to conflict with their official duties. A declaration should also be made when an officer is called upon to take part in the deliberation, decision-making, investigation or enforcement process over matters in which he has a private interest.

20. Having made a declaration, the officer should refrain from taking part in any of the above processes over the matters in question unless otherwise authorised by his supervisor. If an officer has doubts as to whether a relationship or an interest would result in his impartiality in the discharge of his duties being questioned, he should consult his supervisor. It will be for an officer to explain why he has failed to declare a conflict of interest, whether actual or potential, and he may be liable to disciplinary proceedings (or even criminal prosecution) if he could not come up with a reasonable explanation.

21. The situations described in paragraphs 8 to 18 above and the examples cited in the Annex to this Circular are by no means exhaustive. It is not possible to cover every situation where a conflict of interest may arise. In circumstances not specifically covered, an officer should exercise discretion in accordance with the principles prescribed in this Circular, in particular those set out in paragraphs 2 to 5 above, and any supplementary guidelines that may be issued by his Permanent Secretary/Head of Department. Advice from his superior officer should be sought if the officer is in doubt.

Managing Conflict of Interest

22. Supervisors at all levels are required to watch out for any possibility of

their staff being exposed to conflict of interest situations. When a supervisor becomes aware of or receives a report of any conflict of interest, he should examine the facts of the case to determine whether there is any conflict, taking into account the duties of the officer concerned, the relationship between the officer and the person or persons with whom he has official dealings; and/or whether the relationship could lead to embarrassment or loss of impartiality in the discharge of his duties. Where necessary, the supervisor should interview the officer concerned to seek further information on the matter and to remind him of the consequences of a conflict of interest.

23. The supervisor should then decide on the course of action to be taken or make a recommendation to the departmental manager designated to deal with these cases, having regard to the importance of the officer's role in the matter including the extent to which he is called upon to exercise discretion, the sensitivity of the matter and the practicability of assigning the matter to another officer, etc. The decision or recommendation is to be made as soon as possible after receiving the report of conflict of interest.

24. It will normally be adequate to relieve the officer of his involvement in the task which may give rise to a conflict of interest. Transfer to another post may have to be considered if other courses of action are not appropriate. If necessary, the officer may be asked to divest himself of his investment in accordance with CSB Circular No. 9/2001, or to take any other appropriate action.

25. The officer should be advised of the action to be taken. Any report of conflict of interest and any advice given and/or management action taken is to be properly recorded.

26. If a supervisor or departmental manager receives any report/complaint that his subordinate/a particular officer has breached the requirements on avoiding conflict of interest, he should consult his own senior officer as necessary on the appropriate follow-up action. It is necessary to make a report to the Police or ICAC in accordance with CSB Circular No. 20/79 if there is a criminal element in the allegation.

Departmental Instructions

27. Permanent Secretaries/Heads of Department have a responsibility to promote awareness at all levels of the importance to avoid and report conflict of interest. They are advised to critically assess the relative risks of their staff being exposed to conflict of interest situations in the normal course of operations and the need to issue specific departmental guidelines. These guidelines should highlight the potential conflict of interest situations in the department's operations, officers' responsibility to disclose actual or potential conflict of interest including information on the occupation of their spouse where appropriate, the supervisors' role to identify

and manage actual or potential conflict of interest situations, the departmental procedures for declaring and administering conflict of interest situations, etc. Permanent Secretaries/Heads of Department should regularly review and update the departmental guidelines and requirements on avoiding conflict of interest for the general information of staff.

Circulation

28. Bureaux/departments are requested to provide a copy of this circular to all newly appointed officers as soon as possible after appointment and to re-circulate this circular to their staff every six months (including non-civil service contract staff who, by virtue of their terms of employment, are subject to the same Government rules and regulations on conduct and related matters as applied to civil servants).

Enquiries

29. Any enquiry about the content of this circular should first be addressed to Departmental Secretaries who, if in doubt, may contact Chief Executive Officer (Conduct & Discipline)1 at 2810 3493 or Senior Executive Officer (Conduct & Discipline)1 at 2810 3185 of the Civil Service Bureau.

30. CSB circulars and regulations, including those related to conflict of interest, could be accessed through the "Information Repository on the Administration of the Civil Service" located at the service-wide intranet Central Cyber Government Office.



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for Secretary for the Civil Service

Examples of Conflict of Interest Situations

Examples of situations which may give rise to a conflict of interest are provided below.

(a) Use of Discretionary Power

- an officer responsible for contract management favouring or giving preferential treatment to a contractor with whom he has personal connections.
- an officer entering into partnership with contractors whom he could favour or give preferential treatment to in official business.
- an officer involved in the award of contracts joining the office of the successful bidder soon after resignation/retirement.

(b) Use of Official Position

- an officer soliciting favour or assistance from his subordinate staff in dealing with his own personal matters.
- an officer using his department's computerised system to obtain information for unauthorised purposes.
- an officer responsible for booking tickets reserving tickets for relatives and friends without going through the proper booking procedures.
- an officer assisting his spouse, an insurance agent, to approach trainees to subscribe to insurance policies.
- an officer borrowing money from persons under investigation.
- an officer borrowing money from his subordinates without prior permission.
- an officer supplying a reference for a candidate in a recruitment exercise in which he is involved.
- an officer in his capacity as a member or an office bearer of a professional body soliciting advantages for the professional body from businesses in respect of which he has enforcement responsibilities.
- an officer participating in the evaluation and selection of tenders where one of the bidders is his close relation/friend.

(c) Use of Official Information

- an officer in possession of privileged information by virtue of his official position investing or aiding another person to invest on the basis of such information.
- an officer involved in a tender exercise disclosing confidential tender assessment criteria to a company in which his family, relatives or close personal friends work or have a financial interest.
- an officer responsible for licensing having his spouse operating a consultancy firm advising clients on licensing matters.
- an officer involved in tender assessment advising his personal friends on strategy in bidding for tenders.

(d) Position of Obligation

- an officer accepting free or discounted meals or moon cake coupons from a restaurant in respect of which he has enforcement responsibilities.
- an officer borrowing newspapers and magazines from a newspaper stall in respect of which he has enforcement responsibilities.
- an officer having his flat decorated free or at a discounted price by a contractor whose works projects are under his supervision.
- an officer frequently indulging in games of chance for money or money's worth with his subordinates or his work contacts.

(e) Entertainment

- an officer accepting frequent or excessive entertainment from persons with whom he has official dealings.
- an officer on a promotion board accepting entertainment from candidates selected to attend the board.
- an officer with enforcement responsibilities in respect of licensed food businesses or places of public entertainment accepting entertainment from such establishments.
- an officer undertaking building completion inspections accepting meals from building contractors or property developers.

(f) Investments

- an officer responsible for boundary control duties investing in a transportation company engaged in the movement of goods or passengers across Hong Kong's boundary.
- an officer investing in a company which provides goods or services in respect of which he has regulatory and enforcement responsibilities.
- an officer responsible for recruitment and promotion investing in an executive search firm.
- an officer responsible for a specialist subject investing in a company which advises its clients on that subject.
- an officer making investments in licensed premises in respect of which he has enforcement responsibilities.

(g) Outside Work and Activities

- an officer working part-time for companies which have official dealings with his department.
- an officer undertaking outside work in connection with private building/construction projects falling within his official duties.
- an officer involved in the processing or assessment of government tenders preparing bids for prospective contractors.
- an officer of a works department undertaking part-time work for contractors hired by his department.