

RESTRICTED

GOVERNMENT SECRETARIAT
HONG KONG

Ref.: PF 66/22-C III

4 December 1992

Civil Service Branch Circular No. 19/92

Conflict of Interest

(Note : Distribution of this circular is Scale A i.e. it should be read by all officers. A Chinese translation is attached.)

Introduction

This circular sets out the common areas in which a conflict of interest may arise between an officer's official duties and his private interests. It also gives general guidance on how such conflicts can be avoided and the appropriate course of action to be taken when such a conflict, whether real or apparent, arises.

2. The situations described in this circular are by no means exhaustive; departments may have to issue additional directions or instructions as and when necessary. In case of doubt, officers should seek the advice of their superior officers or departmental secretaries.

3. All officers are strongly reminded that they should at all times make a conscious effort to avoid or declare, as appropriate, any conflict that may arise or has arisen. Failure to do so may render them liable to disciplinary action which may result in removal from the Service.

Conflict of interest

4. A conflict of interest is likely to arise when an officer's loyalty to the Government conflicts with his loyalty to :

(a) his family and other relations;

(b) his personal friends;

(c) the clubs and

- (c) the clubs and societies to which he belongs;
- (d) his professional colleagues in the private sector; or
- (e) any person to whom he owes a favour or is obligated in any way.

5. The Government has no wish to lessen the many legitimate loyalties that will be felt by an officer to his family, friends, etc. However, it is also essential that all civil servants should be honest and impartial in their dealings with members of the public and with their staff. A civil servant must not use his position in the Civil Service, nor any information made available to him in his capacity as a civil servant, to benefit himself or his family, financially or otherwise, or to favour his relations or friends or any other group of people with whom he has personal or social ties. He should also avoid putting himself in a position where he might arouse any suspicion of dishonesty, or of using his official position to benefit himself or favour his family and friends.

6. An officer should therefore :-

- (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) avoid putting himself in a position of obligation to anyone who has or may have official dealings with his department, including his own subordinate staff;
- (c) 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, and refer all legitimate requests to the proper subject officer to be dealt with in the normal way; and
- (d) report to his superior officer any private interest that might influence, or appear to influence, his judgement in the performance of his duties.

Investments that may lead to a conflict of interest

7. All officers should consider carefully before acquiring any investment or other interest whether this could lead to a real or apparent conflict with his official duties. Officers are reminded in particular of CSR 461 on investments. The word "investment" means any investment, shareholding or direct or indirect interest in any company or undertaking registered or carrying on business in Hong Kong, and includes any interest in land or buildings in Hong Kong.

/It also

It also covers any investment held by an officer in the name of his wife or any other person. It will be deemed to be a conflict of interest between an officer's official duties and his investments if he is able to profit financially as a result of information obtained in his official capacity. In case of doubt, an officer should seek the advice of his Head of Department before acquiring an investment.

Avoid being placed in a position of obligation

8. An officer who has been placed in a position of obligation to someone else may find himself later being asked to return a favour by providing advice, assistance or information that will give that person an unfair advantage. Further, if an officer accepts entertainment or other favours from a person having official dealings with the officer's department, or who is likely to have such dealings in the future, others may be led to suspect the officer's motives.

9. An officer should at all times ensure that his dealings with subordinate staff do not place him in a position of obligation that may lead to a conflict of interest. In particular, an officer should not accept excessive amounts of entertainment, or indulge in games of chance (e.g. poker and mahjong) for high financial stakes with, or accept a waiver of debt from, subordinates or persons with whom he has or may have official dealings. Failure to do so would lead to disciplinary action against the officer which may result in his removal from the Service. Officers are also reminded that borrowing money from subordinates without prior permission contravenes the Acceptance of Advantages (Governor's Permission) Notice 1992 and is a criminal offence under section 3 of the Prevention of Bribery Ordinance.

Acceptance of free service

10. Although the acceptance of free service, for example legal service, is not prohibited by the Acceptance of Advantages (Governor's Permission) Notice 1992, officers should take note of the following considerations before accepting the free service :-

- (a) whether the acceptance of the free service will lead to a conflict of interest with their official duties or place them in a position of obligation to the donor;
- (b) whether the acceptance of the free service will lead to embarrassment in the discharge of their functions; and
- (c) whether the acceptance of the free service will bring them or the public service into disrepute.

/11. It is the

11. It is the responsibility of an officer to declare to the Head of Department if he has official dealings with the donor or if such dealings arise in future. The Head of Department should then decide whether it is still appropriate for the officer to handle the subject case in question.

Entertainment

12. The attention of all officers is drawn to Civil Service Regulations 431 - 435 on the acceptance of entertainment. Before accepting any entertainment, as defined in section 2 of the Prevention of Bribery Ordinance and reproduced in CSR 432, an officer should consider very carefully whether the entertainment is liable to be regarded as excessive, or as inappropriate (having regard to official dealings between the officer and his host), or as undesirable (taking into account the character of the host). Officers are also warned that the acceptance of gifts and other advantages (even those permitted under the Acceptance of Advantages (Governor's Permission) Notice 1992) which has led or could lead to a conflict of interest may render them liable to disciplinary action, or even to criminal prosecution under section 4 of the Prevention of Bribery Ordinance.

Requests for advice and information

13. A conflict of interest may arise because an officer is asked to assist or advise a relation, friend, or person to whom he owes a favour in his dealings with the government. For example, a tax assessor may be asked to help in making a tax return, an officer involved in a tender exercise may be asked to advise on how to make a successful tender, a land executive may be asked to assist in a land transaction, or an officer involved in appointments may be asked to supply a reference for a candidate.

14. Such requests may appear to be very difficult to refuse without giving offence, especially when the person making the request is a close relation or an esteemed friend or acquaintance, or a person who has some hold over the officer. An officer to whom such a request is made should proceed as follows :-

- (a) Where the advice or assistance cannot be given because it would give the recipient an unfair advantage over other people, the request should be refused. The officer may wish to explain that it is against the rules for him to provide the information, advice or assistance requested.
- (b) Where the advice or assistance can be given legitimately, the person seeking the advice should be

/asked to

asked to contact the subject officer in the normal way. Where the request is legitimate and the civil servant approached is himself the subject officer, then the advice or assistance sought may be given, but a note must be made on the relevant file that this has been done and of the relationship between the officer and the person concerned.

Outside work

15. The attention of all officers is drawn particularly to Civil Service Regulations 550 - 553 governing the performance of outside work. Officers are reminded that they must not take up any paid outside work without permission, and that permission will not normally be given where the outside work would involve the use of information made available to the officer in his official capacity or could give rise to a split in loyalties between the Government and his outside employer. While no permission is required to perform unpaid outside work outside office hours, it is the duty of every officer to consider conscientiously before undertaking the work whether it might give rise, or appear to give rise, to any conflict of interest. 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 for which he intends to work after leaving the service.

Conflict arising from existing private interests

16. A conflict of interest may arise because a civil servant is asked to work in his official capacity in an area where he already has a private interest. For example, he may be asked to undertake negotiations with a company in which he or a close relation holds shares, to clear a squatter area in which a close friend lives, to advise on the appointment or promotion of a relation or friend, to deal with a matter in which a society to which he belongs has a deep interest, or to deal with an issue affecting or directly relating to his country, region or home town. In all such cases, the officer should declare his private interest to his superior officer, who will then advise him how to proceed.

17. Officers are reminded in particular that they should declare any investments held by themselves and by their close relations if they are asked to work in an area where a conflict of interest could arise between these investments and their official duties.

/Advice

Advice

18. Officers should address enquiries in relation to this Circular to their Departmental Secretaries, who, if in doubt, should contact the respective departmental divisions in the Civil Service Branch.

19. This circular supersedes Civil Service Branch Circular No. 18/81, which is hereby cancelled.

Mrs Alice LAI
for Secretary for the Civil Service

c.c. Registrar, Supreme Court (f.i.)