

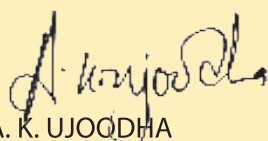
Foreword

Conflict of interests is a criminal offence, punishable under Section 13 of the Prevention of Corruption Act 2002 to penal servitude not exceeding 10 years. The cases that have been reported to the Independent Commission Against Corruption and which are eventually being referred to the courts with the consent of the Director of Public Prosecutions shed light on the fact that members involved in the decision-making process of a public body might not be conversant with the provisions of the law relating to conflict of interests or they might not be fully conversant with the standard of conduct required from them when in a situation of conflict thereby exposing them to a potential risk of being investigated and prosecuted for a criminal offence.

The offence of conflict of interests is not aimed at punishing the interest but rather aims at preventing and punishing a decision being reached by a public body, which is biased to the private interest of a decision maker. In order to avoid conflict of interests, it is advisable for a person involved in the decision-making process of a public body to disclose his interest and avoid taking part or voting in proceedings relating to that decision.

Therefore, to enforce good governance, public sector organisations have a prime responsibility of creating an environment that supports the identification, disclosure and management of conflict of interests. Pursuant to our statutory mandate to educate the public, it is expected that this handbook will support public sector organisations in creating a culture that encourages and supports the identification and disclosure of conflict of interests. The handbook provides guidelines for managing effectively situations of conflict of interests.

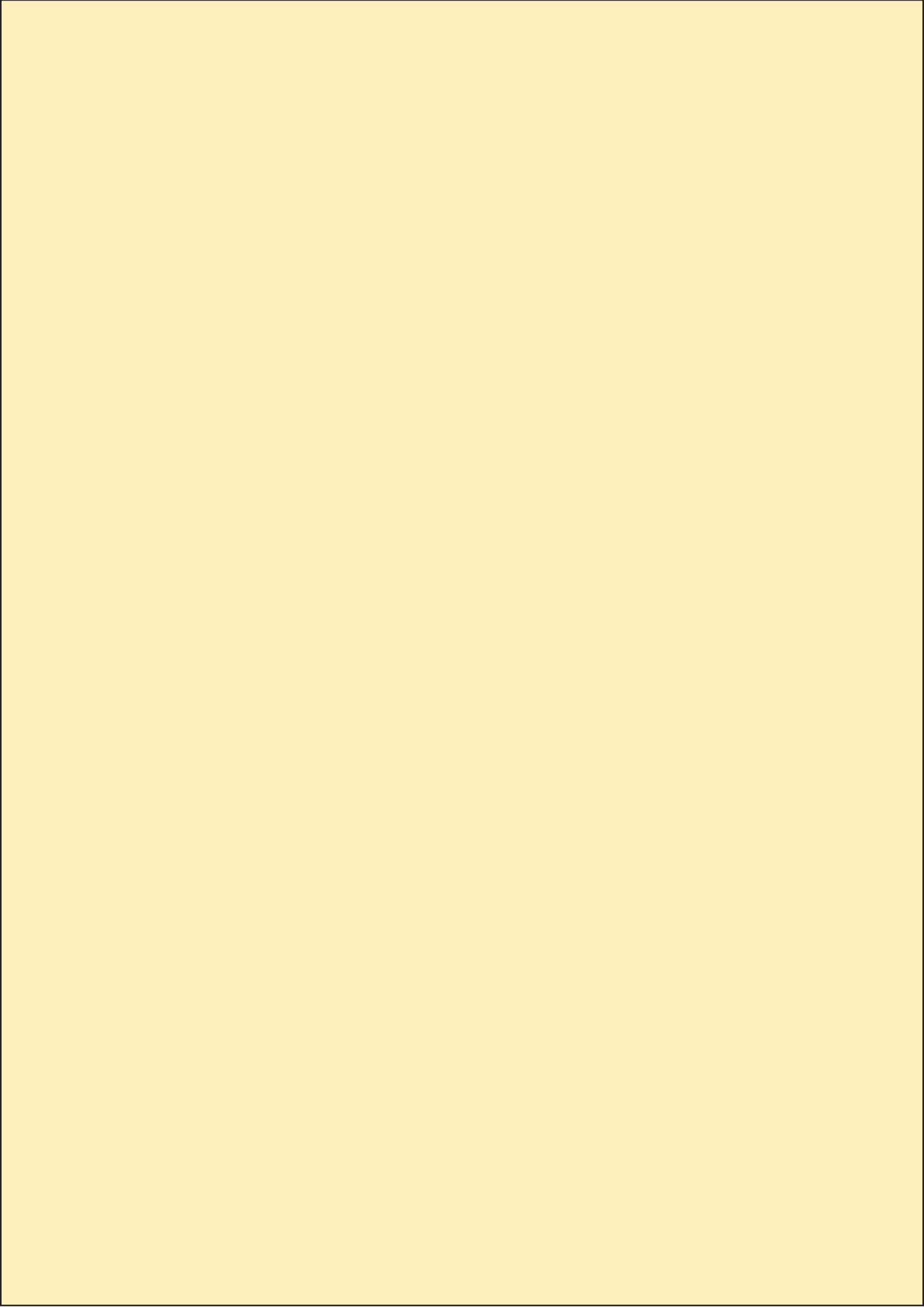
We trust you will find this handbook useful in your endeavour to manage conflict of interests and ensure that public affairs are conducted in line with the highest legal and ethical standards.



A. K. UJODHA
DIRECTOR-GENERAL
ICAC

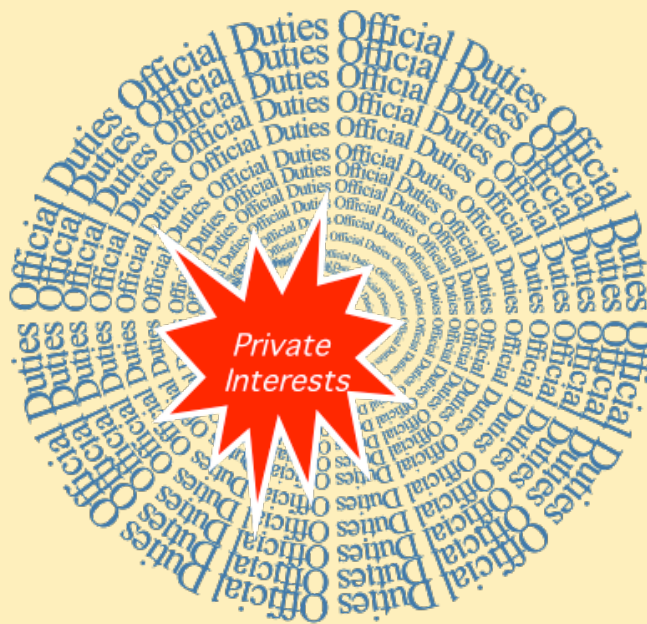
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DEFINING CONFLICT OF INTERESTS

The Prevention of Corruption Act 2002 (PoCA 2002) does not provide for a definition of conflict of interests. However, it describes and proscribes situations of conflict of interests. Generally, as per encyclopedias and guidelines on professional ethics and conduct, conflict of interests is described as an instance in which a public official, while in the exercise of his public duties, has a **personal or private interest** that can improperly influence the discharge of his functions.



Conflict of interests is a situation in which a public official has a private interest that can influence the objective and impartial exercise of his or her official

Under the Prevention of Corruption Act 2002, public official means a Minister, a member of the National Assembly, a public officer, a local government officer, an employee or member of a local authority, a member of a Commission set up under the Constitution, an employee or member of a statutory corporation, or an employee or director of any Government company; and includes a Judge, an arbitrator, an assessor or a member of a jury.

WHAT ARE THE KEY FACTORS MAKING UP A SITUATION OF CONFLICT OF INTERESTS?

There are two key factors making up a situation of conflict of interests.

They are:

- I Private Interest
- II Conflict between Private and Public interests

PRIVATE INTEREST

Private interest is the personal advantage/gain/benefit of the public official or his relative* or associate** in the decision that a public body is to take. This interest may influence the objective and impartial judgement of the public official.

Examples of private interests are :

- property
- commercial interests or shares
- benefits such as fees, awards of contracts, rewards, premiums, concessions, discounts, loans, gifts, hospitality, promotions and appointments

* & ** : Please refer to Appendix 2

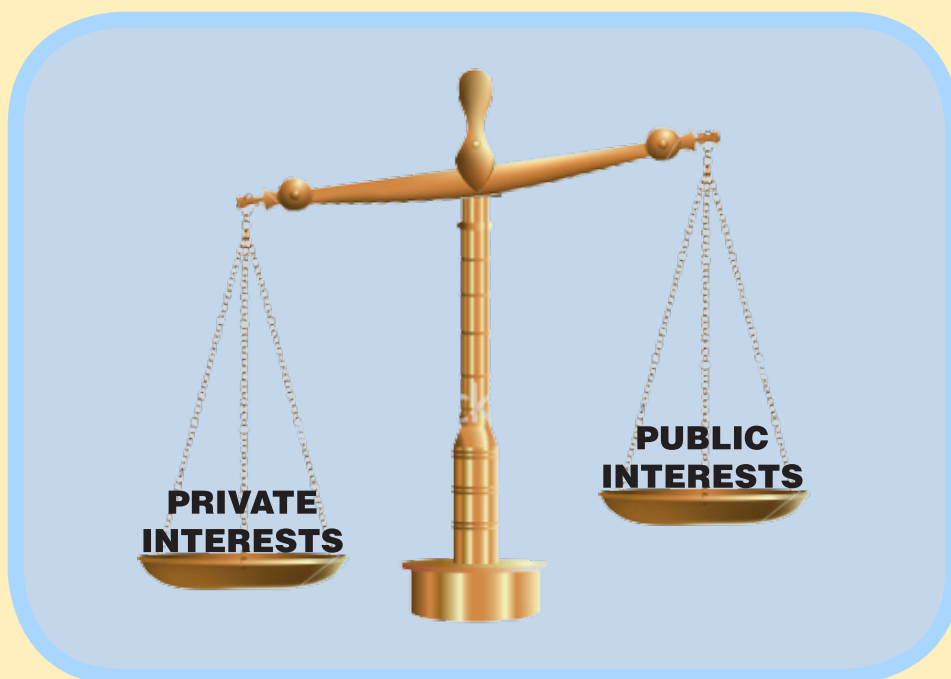
CONFLICT BETWEEN PRIVATE AND PUBLIC INTERESTS

Conflict of interests involves a conflict between the public official's private interests and the interests of the government body for which he is working.

Society values public officials because they expect them to be objective and independent in the discharge of their functions. The general public places its trust and confidence in them and expects them to act in the public's best interests. They expect that public officials put public interest first at all times.

However, all individuals, including public officials, have private or personal interests.

The conflict arises since the public official is in a situation where he has to choose between his own private interest and the proper and impartial exercise of his functions, in other words, acting in public interest. Private or personal interests make it difficult for the public official to fulfill his duties impartially.



IDENTIFYING SITUATIONS OF CONFLICT OF INTERESTS

Identifying situations of conflict of interests is crucial towards avoiding the commission of the offence of conflict of interests. The key is to determine whether, while discharging of his official duties, the private interests of a public official are likely to interfere with his duty to serve public interest best.

Under the Prevention of Corruption Act 2002, conflict of interests is classified as a corruption offence. It is specifically dealt with under Section 13 of the Prevention of Corruption Act 2002 but other sections of the legislation are also relevant when considering situations of conflict of interests. Thus, there are a number of factors that can lead to a situation of conflict of interests where one's public duty and private interests are in conflict.

DECODING SITUATIONS OF CONFLICT OF INTERESTS

A. Section 13 - CONFLICT OF INTERESTS

According to Section 13 of the Prevention of Corruption Act 2002, the following scenarios can amount to situations of conflict of interests:

Scenario I

if a public body *is proposing to deal with a company, partnership or other undertaking* and:

- (i) the public official who is a member, director or employee of that public body or his relative (*such as spouse, conjugal partner, brother, sister, brother-in-law, sister-in-law and any lineal ascendant or descendant*) or his associate is having any direct or indirect interests in the company, partnership or other undertaking and
- (ii) that public official or his relative or his associate owns more than 10 per cent of total issued share capital or of the total equity participation in the company, partnership or other undertaking

Scenario II

if a public body is taking a decision and the public official or his relative or an associate of his **has a personal interest in a decision which a public body is to take**

B. Section 7 - PUBLIC OFFICIAL USING HIS OFFICE FOR GRATIFICATION

Under Section 7 of the Prevention of Corruption Act 2002, it is an offence for any public official who makes use of his office or position for gratification*** for himself or another person.

Therefore, a situation of conflict of interests may also arise when the public official

takes a decision or action in relation to any matter in which he or his relative or associate has a direct or indirect interest

However, Section 7 does not apply to instances where a public official holds office in a public body as a representative of a body corporate which holds shares or interests in that public body and acts in the interest of that body corporate.

It is important to point out that if a public official finds himself in the above described situations, he is in a situation of conflict of interests and if he does not comply with the provisions of the Prevention of Corruption Act 2002, he is committing a corruption offence.

The Prevention of Corruption Act 2002 makes it mandatory for the public official in situations of conflict of interests to ***declare forthwith the nature of the interest in writing to that public body and not vote or take part in any proceedings of that public body relating to the decision.***

*** : Please refer to Appendix 2

EXAMPLES OF SITUATIONS OF CONFLICT OF INTERESTS

Example 1

Mr Smith is the Chairman of the Board of Directors of a public body. At a particular board meeting, the directors considered the conclusion of the Tender Committee under the item of Allocation of Contract for “Sign Boards”.

The Board of Directors under the recommendation of its Chairman, approved the contract to be awarded to the lowest responsive bidder namely TREK Ltd. The son of Mr Smith is the director and sole shareholder of TREK Ltd. Mr Smith does not disclose his interest to the Board and the Board unanimously approves that the Contract be allocated to TREK Ltd.

Is there conflict of interests?

In all probability, given that the lowest responsive bid was from TREK Ltd, it was in the best interest of the public body to allocate the contract to TREK Ltd. But the scope of legislation is to deter and punish conflict of interests and clearly the son of Mr Smith had a personal interest in the decision which the public body had to reach and by taking part in the proceedings to approve that the contract be awarded to TREK Ltd, Mr Smith has committed the offence of being in conflict of interests.

Example 2

Mr Black is the Chairman of the Board of Directors of a statutory corporation. He is duly mandated by the Board to effect the recruitment of three junior managers. At the subsequent meeting of the Board of Directors, he informs the Board that following a selection exercise, 10 candidates meet the needful requirements but Mrs Smith, Mr Duncan and Mr Barlow have been found to be the best qualified candidates at the interview which he presided. At no point in time, he discloses the fact that Mr Barlow is his nephew.

Is he in a situation of conflict of interests?

It should be noted that a nephew is not considered as a relative under the Prevention of Corruption Act 2002 and as such conflict of interests does not arise but the perception of bias might cause an unsuccessful candidate to the interview to request for a judicial review.

MANAGING CONFLICT OF INTERESTS

To uphold organisational integrity, public sector organisations have the prime responsibility of creating an environment that supports the identification, disclosure and management of conflict of interests. Also, as a natural personal commitment to organisations' principles, someone in a position of trust, such as a public official must uphold personal and organisational integrity by taking steps to avoid conflict of interests.

WHY IS CONFLICT OF INTERESTS A MATTER OF CONCERN?

The community has a right to expect that public officials of all grades perform their duties in a fair and impartial manner and that the decisions they take are not influenced by self-interest, private affiliations or the likelihood of personal gain.

Conflict of interests is an ethical issue. The public official is in an ethical dilemma. He has to choose between his private interest and his duty to serve public interest. In such situation, he cannot be expected to take a decision in public interest when his own private interest is at stake. Even the most ethical person might succumb to temptation when the potential gains are large.

Therefore, when conflict of interests is either acted upon or disregarded, it leads to biased or corrupt behaviour. If a person acts in his personal interest while performing public duty, he will be acting with bias. Personal interests make it difficult to fulfill his duties impartially. Conflict of interests is one form of corruption if it is not reported forthwith in writing.

A public body is conducting a promotion exercise of staff. John, a member of a panel conducting the promotion exercise, has one of the candidates being his brother-in-law.

Consider the above example. John has the public duty to conduct an impartial and fair promotion exercise serving the interest of the public body to the best. However, John has a private interest in the form of a relative in this promotion exercise. John is in a situation of conflict of interests. Assuming John acts upon his private interest by favouring his brother-in-law for the promotion, then John is discharging his duties with bias or corruptly. Where private interest has in fact compromised the proper performance of a public official's duties, that situation is an instance of "abuse of office" leading to a corrupt act. If left unchecked, situations of conflict of interests can also lead to harmful ethical and managerial effects. A conflict of interests situation creates an appearance of impropriety that undermines confidence in the ability of the public official to act properly.

Conflict of interests situations result in, amongst others:

- Inefficiency
- Misuse and wastage of public funds
- Poor quality of public service or the wrong public service being provided
- No meritocracy prevailing
- Loss of trust in public officials and public sector organisations
- Loss of organisation's reputation and creditworthiness

As such, identifying and managing situations of conflicts of interests are of crucial importance.

MANAGING SITUATIONS OF CONFLICT OF INTERESTS

The best way to handle conflict of interests is to abide by the principles set out under the Prevention of Corruption Act 2002. The legislation sets forth the conduct to be adopted to avoid situations of conflict of interests leading to corruption.

The Prevention of Corruption Act 2002 under Section 13 makes it mandatory in situations of conflict of interests to **declare forthwith the interest in writing to that public body** and **not vote or take part in any proceedings of that public body relating to the decision.**

To deal with situations of conflict of interests the law prescribes that the public official need to:

- 1. declare the nature of the interest in writing*
- 2. declare the conflict immediately and*
- 3. not take part or vote in any proceedings in relation to that decision*

Therefore, public sector organisations need to have a system in place to allow for the proper disclosure and management of conflict of interests situations. It is important to highlight that management of conflict of interests situations is a shared responsibility of both the public official and top management of a public body.

1. RESPONSIBILITY OF MANAGEMENT

A) Setting up of systems to manage conflict of interests

Section 45 of the Prevention of Corruption Act 2002

... where in the exercise of his functions, the Chief Executive of a public body is of the opinion that an act of corruption may have occurred, he may refer the matter to the Commission for investigation.

Management of public bodies have the prime responsibility to put in place systems that effectively manage situations of conflict of interests if they want to ensure that their affairs are conducted with the highest legal and ethical standards. They need to establish systems which require officials to identify personal interests which may conflict and ensure that appropriate actions are taken to eliminate the conflict.

Consideration should be given to the following steps when setting up an appropriate system for the effective management of situations of conflict of interests:

STEP		DESCRIPTION
1	Adoption of conflict of interests declaration form	<p>Declaration of interests is the most important component of the system for tackling conflict of interests. A conflict of interests declaration form facilitates case-by-case declaration by public officials of any interests they might have in the matter under consideration. It is fundamental instrument of transparency and serves as a necessary condition for the other components of the regulatory system to work in particular exclusion from the decision-making process.</p> <p>A model form is at appendix 1.</p>
2	Policy statement	The policy statement should define situations of conflict of interests, outline use of the conflict of interests declaration form, identify to whom declarations are to be made, assign different responsibilities, highlight the sanctions and provide extract of relevant laws such as Prevention of Corruption Act 2002.
3	Training	Training to empower staff to identify situations of conflict of interests, comply with the policy and use the conflict of interests declaration form.
4	Advice	Provide guidance in case of doubts and respond to questions about conflict of interests to ensure proper compliance to policy statement.
5	Recording	Proper recording of the reported conflict of interests declaration forms is crucial for monitoring purposes.
6	Replacement of officers	Ensure replacement of officers in situations of conflict of interests when necessary.
7	Monitoring	Coordinate all the elements of the system to ensure compliance to and conduct in line with legal provisions and policy statement.

B) Codes of ethics

Public institutions can also use codes of ethics to vulgarise and manage situations of conflict of interests. The code of ethics for public officials published by the Ministry of Civil Service and Administrative Reforms in 2007 defines situations of conflict of interests and states that the onus is on the public official to disclose promptly, fully and appropriately any actual or potential conflict of interests.

Thus, public officials cannot claim that they were unaware that their improper behaviour was unethical.

2. RESPONSIBILITY OF PUBLIC OFFICIAL

In situations of conflict of interests, Section 13 of the PoCA 2002 provides for the public official to:

- 1. disclose forthwith the nature of the interest in writing and*
- 2. not take part or vote in any proceedings in relation to that decision*

In most circumstances, the situations of conflict of interests are known only to the public official, in the first instance. Therefore, the public official must take personal responsibility for identifying problematic situations. It is the responsibility of the public official to declare in writing the nature of the interest to the public body when he or his relative or his associate has a personal interest in a decision which a public body is to take. He has also a duty to withdraw from the matter in hand that is apply self-exclusion.

The table below describes the highest expected ethical standards that can be adopted by the public official to uphold his personal integrity, that of his organisation and the Civil Service.

LEGAL PROVISIONS		EXPECTED ETHICAL STANDARDS
STEP 1	Disclose forthwith the nature of the interest in writing and	<p>Declare publicly, fully, appropriately and immediately in writing the type of private interest involved in the decision the public body is to take.</p> <p>The declaration can be made using a COI declaration form if available by having an official note recorded about the nature of the interest.</p>
STEP 2	Not to take part or vote in any proceedings in relation to that decision	<p>Whilst participating in a meeting/ member of a panel:</p> <ul style="list-style-type: none"> • Leave the meeting or the panel and a record of such conduct is kept, that is apply self-exclusion • Not influence, in any way, the decision • Avoid access to any documents relating to that decision • Not to inquire the proceedings or outcome of the meeting <p>Whilst discharging of a duty :</p> <ul style="list-style-type: none"> • Not get involved, in any manner, in that particular work of the public body and a record of such conduct is kept, that is apply self-exclusion • Avoid access to any documents relating to that work • Not influence, in any manner, any stage or aspect of the work • Not inquire about the work

Disclosure about conflict of interests helps to maintain transparency. It should be noted that any public official who fails to disclose his direct or indirect interest

- in a decision which his public body is to take
- in a company, partnership or other undertaking with which his public body proposes to deal

shall commit a corruption offence under the Prevention of Corruption Act 2002.

SUMMARY

Why should I worry about conflict of interests?

It is a corruption offence. As public officials, you have been entrusted with adequate powers and resources to carry out a number of duties, without any bias, for the welfare of the public. Private interests make it difficult to fulfill one's duties impartially.

What if I don't disclose a conflict of interests?

Things kept behind closed doors are more likely to attract suspicion and allegations of possible misconduct. Under the PoCA 2002, not declaring a situation of conflict of interests is a breach to the law. It is an offence liable to imprisonment of 10 years maximum.

What should I do when faced with a situation of conflict of interests?

According to Section 13 of the PoCA 2002, I have to disclose the nature of the interest in writing to the organisation and not take part or vote in any proceedings in relation to that decision.

Do I still need to disclose a conflict of interests even when there is neither financial benefit nor loss involved?

Yes. The nature of a conflict of interests may extend beyond financial benefits.

What should I do if I suspect that another public official is in a situation of conflict of interests and has not declared it?

Under Section 44 of the PoCA 2002, where an officer of a public body suspects that an act of corruption has been committed within or in relation to that public body, he shall immediately make a written report to the ICAC.

Appendix 1: Model Declaration Form for Public Officials

CONFLICT OF INTERESTS DECLARATION FORM

1. PERSONAL DETAILS

Name: _____

Position: _____

Organisation/Section: _____

2. THE SITUATION

Matter under consideration:

Expected roles/duties to be performed by the employee in dealing with this matter:

Are you voting or taking part in any proceedings of that public body relating to such decision?

Yes No

3. PRIVATE INTERESTS

(i). Do you or your relative/associate have a personal interest in the decision which your public body is to take?

Yes No

If "YES," please provide full information below.

.....

.....

(ii). Do you or your relative/associate have a direct or indirect interest and you or your relative/associate hold more than 10 per cent of the total issued capital or of the total equity participation in the company, partnership, or other undertaking which your public body is proposing to deal with?

Yes No

If "YES," please provide full information below.

.....

.....

4. CERTIFICATION

The above is an accurate and current statement of all my reportable interests to the best of my knowledge. I make this declaration in good faith and further state that I am aware of the consequences of any false or incorrect information given by me.

Date: _____

Signature: _____

Please return this form to the next higher administrator in your supervisory line who is at least at the level of director.

HEAD'S STATEMENT

DECISION

Date: _____

Signature: _____

Appendix 2: Excerpts from Prevention of Corruption Act 2002

According to Section 13 of the PoCA 2002, conflict of interests may be defined as:

(1) where

(a) a public body in which a public official is a member, director or employee proposes to deal with a company, partnership or other undertaking in which that public official or a relative or associate of him has a direct or indirect interest; and

(b) that public official and/or his relative or associate of him hold more than 10 per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking,

that public official shall forthwith disclose, in writing, to that public body the nature of such interest.

(2) where a public official or a relation or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision

(3) any public official who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

* **“relative”** in relation to a person, means-

- a spouse or conjugal partner of that person
- a brother or sister of that person
- a brother or sister of the spouse of that person; or
- any lineal ascendant or descendant of that person

Lineal ascendant or descendant of that person – example father, mother or son, daughter of that person

** **“associate”**, in relation to a person, means –

- (a) a person who is a nominee or an employee of that person;
- (b) a person who manages the affairs of that person;

- (c) a firm of which that person, or his nominee, is a partner or a person in charge or in control of its business or affairs;
- (d) a company in which that person, or his nominee, is a director or is in charge or in control of its business or affairs, or in which that person, alone or together with his nominee, holds a controlling interest, or shares amounting to more than 30 per cent of the total issued share capital; or
- (e) the trustee of a trust, where -
 - (i) the trust has been created by that person; or
 - (ii) the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than 20 per cent of the total value of the assets of the trust;

***** “gratification”**

- (a) means a gift, reward, discount, premium or other advantage, other than lawful remuneration; and
- (b) includes -
 - (i) a loan, fee or commission consisting of money or of any valuable security or of other property or interest in property of any description;
 - (ii) the offer of an office, employment or other contract;
 - (iii) the payment, release or discharge of a loan, obligation or other liability; and
 - (iii) the payment of inadequate consideration for goods or services;
- (c) the offer or promise, whether conditional or unconditional, of a gratification;

“public body” means a ministry or Government Department, a Commission set up under the Constitution or under the authority of any other law, a local authority, or a statutory corporation; and includes a Government Company

“public official” means a Minister, a member of the National Assembly, a public officer, a local government officer, an employee or member of a local authority, a member of a Commission set up under the Constitution, an employee or member of a statutory corporation, or an employee or director of any Government company; and includes a Judge, an arbitrator, an assessor or a member of a jury.

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