

CHAPTER 3

Integrity Management in the Public Administration

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A. Conflict of Interest— Vanuatu's Experience

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A *conflict of interest* is exactly what the term implies: a conflict between a given person's interests as a public servant and his or her interests as a private person. A conflict of interest may compromise the integrity of the official and improperly influence the decisions he or she makes. Defining conflict of interest is not the problem; detecting, preventing and stopping it is.

A culture that breeds conflicts of interest

The culture of many countries breeds so many conflicts of interest that it is difficult to imagine life without them. In Vanuatu, and the Pacific in general, people are linked by strong tribal allegiances. They take actions or decisions to pay back past favors or to store up future favors or rewards, such as jobs or contracts. These allegiances alone dramatically increase the number of conflict-of-interest situations. And, since the reason for a decision is not always apparent, conflicts of interest are difficult to detect.

Until recently, Vanuatu has had very limited international exposure. Its population has thus been little aware of the philosophical, religious and political debates that have accompanied and underpinned the evolution of society in other countries over several centuries. Although church attendance is very high throughout the country, and preaching is mostly of the “fire and brimstone” variety, no recognizable moral or ethical code has developed to define “right and wrong” in the public sphere. Put in a nutshell, no matter how outrageous or illegal a public official's actions may be, he or she does not need to fear any consequences. Significant condemnation is unlikely to come, either from his close and “wantok” group, or from the public, and only

rarely from the regulatory authorities. Even dishonesty or outright crime by public officials does not really disturb people in Vanuatu.

The same is true for the political sphere: voters have the widespread expectation that if they bother to vote for a candidate, he or she will, in return, look after them as a priority and take decisions that favor them personally. Until recently, when a new minister took office, he would exchange the entire ministry staff, thereby perpetuating the system of allocation of jobs based on political loyalty rather than merit or qualification. Such a system inevitably leads to conflicts of interest.

Under such circumstances, it is fairly easy for a dynamic person to succeed in politics, no matter whether he or she is honest. Indeed, many people in Vanuatu would even say that to be dishonest, or at least readily willing to compromise one's own honesty, is a prerequisite for being selected as a political candidate. A strong conscience and sense of honor and integrity are serious handicaps in Vanuatu's political arena.

Self-serving attitudes and decision making based on self-interest rather than national interest are commonplace and have contributed to the political instability from which Vanuatu has suffered over the last decade. Party leaders who lose votes of confidence in parliament systematically set up their own new party. This has resulted in so many political groupings represented in parliament that it is impossible for a single party to form the Government. Coalition governments tend to set the bar at the lowest common denominator to ensure political survival. This makes fundamental change for the better extremely difficult.

Blatant conflict of interest among civil servants and politicians

Vanuatu has seen many instances of blatant abuse by civil servants and politicians of their public positions to further their private and political interests. To give a few examples:

- A former minister of foreign affairs used his position to sell passports for cash.
- In the days before a general election, a former prime minister removed about USD1 million from a cyclone relief fund to buy votes and pay for shipping his party's supporters around the country.
- A former minister of finance created a housing loan scheme within the workers' National Provident Fund from which he awarded non-commercial loans to political friends who could consequently purchase government

property at well below market value, another fraudulent scheme approved by the same government.

- The Vanuatu Development Bank collapsed because political leaders awarded themselves loans without repaying them, thereby depriving the very people who elected them of desperately needed low-interest finance for rural projects. After a similar fraud had occurred at the National Bank of Vanuatu, the Bank was rescued from the brink of collapse by means of reversing Vanuatu's "localization" policy, a measure that permitted the hiring of foreign professional bankers who were not poisoned by political interference to manage the institution on a commercial basis.
- In the past, a number of land ministers used to create land titles in their own name on unregistered land and afterwards sell it. Quite naturally, when seeing what their ministers were doing, many of the Land Department's staff followed this example.
- A former prime minister and finance minister used his position to forge Reserve Bank guarantees for tens of millions of United States (US) dollars in favor of a foreign swindler who fled the country, never to be seen again, when the scam was exposed and aborted.
- The chairman of the Vanuatu Maritime Authority, the country's maritime regulatory authority, is also the agent for Taiwanese fishing vessels in Vanuatu. He recently "donated" two trucks to the Department of Fisheries. On the same day that the trucks were handed over to the Department of Fisheries, the minister in charge of that department arranged for fishing licenses to be granted to two Taiwanese longliners, allowing them to fish within the six-mile zone. The same minister also granted the chairman of the Maritime Authority the right to supervise Chinese and Taiwanese fishing vessels in the country. No one questioned whether, under these circumstances, this might constitute a conflict of interest.
- Until quite recently, leading figures from the private sector's Finance Centre held positions on the board of the Vanuatu Financial Services Commission. This Commission is Vanuatu's companies registry and is responsible for regulating private companies operating within the Finance Centre. In addition to the problematic composition of its board, this authority has not been audited for the past seven years, obviously weakening the institution's integrity.
- At present, the Vanuatu Government itself is in a clear conflict-of-interest situation: while the largest employer in the country, it proposes legislation to reduce the employers' and employees' contributions to the Vanuatu National Provident Fund in order to reduce public expenditure and control the national budget.

- Conflict-of-interest situations do not always happen with a prospect of direct personal gain, but simply to reward political supporters, friends or family members. Patronage of this sort inevitably leads to the appointment of unsuitable or unqualified staff. The subsequent misconduct or mismanagement by these people often results in the corrosion of public assets. The Vanuatu Livestock Development, the Government's cattle-breeding ranch, and Natai Fishing, a government fishing project, had to be closed due to such abuses.

These are only a few examples of the types of conflict-of-interest situations that Vanuatu has seen and continues to see; many more examples could be given. Worst of all, the ministers mentioned in these examples are still members of parliament. The former prime minister referred to earlier, for instance, had been jailed for forging the Reserve Bank guarantees. Earlier this year, the President of the Republic, a political crony, pardoned him on "health grounds". The convicted felon promptly stood again for Parliament in the by-election held in December 2003, filling the very seat that was declared vacant upon his conviction. What is more, the politician in question was part of the electoral college that elects the President.

The minister of internal affairs could have released the prisoner on health grounds without pardoning him, but he did not. Still having a suspended criminal sentence hanging over his head would have prevented him from being able to stand in the by-election. And even after the President pardoned him, the Ombudsman could have reported him to the public prosecutor, asking that he be prosecuted under the Leadership Code (which entails disqualification from standing for Parliament for ten years).

No incentive to change, no fear of the consequences

Such blatant abuse of office by the Head of State sends two messages: first, leaders clearly have no incentive to change, and no fear of the consequences of their misconduct other than fleeting embarrassment in the media if caught. And second, it makes the country look ridiculous to foreign investors and development partners; this is certainly not an incentive to invest in the country.

Twenty-three years of foreign aid projects and even a comprehensive reform of the entire public administration has not created an appetite for change in the general public. The population itself is involved in a conflict of interest: to promote their own personal and political interests, chiefs and community leaders put their people's votes up for sale at every provincial and national election. When I stood for Parliament as an independent candidate last year, I

was offered the “guarantee” of blocks of votes in exchange for money or jobs if I were elected. This was despite the fact that I was the only candidate to speak everyday on national radio specifically declaring that I would take no part in the usual ways of getting elected; that I would not provide food, drinks, and money; and that I would not promise jobs or influence after the election. My husband was also approached several times at his business office by community leaders, many of them church elders and chiefs. They were often bringing boxes of voters’ electoral cards to prove they had the votes they were claiming, and asked for money—sometimes ridiculously low amounts—in exchange for votes. In fact it would have been fairly easy—and cheap!—to get the couple of hundred votes I needed to get elected.

In Vanuatu, the people do not hold their leaders accountable for corrupt behavior. Some are still not aware of the connection between political corruption and the declining standard of living; they do not understand that their apathy today will lead to a lower standard of living tomorrow. Many others, even young and educated people, hide behind “custom”, excusing and justifying their timidity by claiming that it is against traditional Melanesian values to criticize “big men”. Again, others are cynical, believing that it doesn’t really matter whether the country’s institutions collapse; they expect development partner countries to come to the rescue, as happened to the neighboring Solomon Islands earlier in 2003, where an Australian force eventually stepped in to prevent the country’s collapse into chaos and criminality.

None of these views is really surprising: if the minister of foreign affairs of your country illegally sells passports for cash, if the finance minister awards himself tax exemptions, if the land minister transfers land titles into his own name—who would expect these people to tackle corruption in their departments? Who do you complain to about corruption if your boss, and his or her boss, are both corrupt themselves?

Under these circumstances, it is vital to be able to rely on independent bodies like an Ombudsman’s Office, a Public Prosecutor and an Auditor-General and their effective functioning. Unfortunately, even though Vanuatu does have powerful laws to protect the public from crooked leaders, this is where the country has completely failed to serve the public’s best interests. What the country lacks are courageous people willing to enforce the existing laws and instruments effectively. It is thus the political culture in Vanuatu that must change. Only the people themselves can stop the decline of the standard of living and of education and government services and the rise of crime and unemployment. As long as the people continue to accept this disdainful treatment by their leaders, things will not change.

B. Managing Conflict of Interest in the Public Sector: The Experience of the Hong Kong Special Administrative Region of the People's Republic of China

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We all manage conflict of interest in our routine daily life, e.g., we want to taste good food but we also want to remain slim. Usually, we are able to manage our personal interest on our own, and people do not care how we do it. It is a completely different matter, however, when it comes to our public life. Here, people expect and demand that public officials manage their interests and discharge their duty in an open and impartial manner. They expect the official's private interests not to compromise the way the official discharges his or her public duty. The public interest must come first.

From the Government's point of view, and indeed from everyone's point of view, conflict of interest needs to be properly managed. We have seen in many cases how conflict-of-interest scandals undermined the credibility of individuals and institutions. So many promising public service careers have been destroyed because the conflict was overlooked, sometimes out of sheer ignorance or stupidity.

The public sector

In the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter: Hong Kong, China) the public sector comprises the civil service and other principal officials appointed under the Basic Law, the Legislative Council (which is our law-making body), and the District Councils (which represent the local communities). We also have a string of advisory boards and committees that advise the Government on many areas of public administration.

Other public bodies in Hong Kong, China include statutory regulatory bodies (e.g., the Broadcasting Authority), major public service providers (e.g., the utilities companies) and other publicly funded institutions (e.g., the universities). For the purpose of this contribution, all these bodies are referred to as the public sector in Hong Kong, China.

Managing conflict of interest

Before determining how to manage conflict of interest, we need to define what it is. In Hong Kong, China, we have a simple definition, spelled out in civil service regulations: a conflict of interest arises “when the private interests of a public official compete or conflict with the interests of the Government or the official's public duties.”

Conflict of interest is largely a “perception” issue: it does not matter whether the involved official considers that he or she acted correctly; what matters is whether the public thinks that the behavior was correct. A practical test to determine whether a conflict of interest has arisen is to ask whether the involved person is prepared to discuss it openly—the so-called “sunshine test”. In this type of analysis, the onus is on the official to prove that he or she has acted properly.

Perception is a living issue that changes over time. A certain act that may have been acceptable ten years ago may no longer be acceptable today. Public officials must thus stay vigilant about current public perception and expectations, and appropriately adjust their way of dealing with possible conflict between their public and private lives.

Conflict of interest being a perception problem, openness and transparency are the obvious answer. A robust system of declaration of interest by public officials should cover

- declaration of financial interests. This should include investments in land and property and shareholding in companies. This is particularly important

for public officers who have access to market-sensitive information, e.g., those who make fiscal policies and decisions, or regulate the financial markets.

- declaration of conflict of interest as and when it arises, e.g., when an officer involved in the award of a contract finds that his brother is one of the tenderers.
- documentation of the declarations. This is important both for protecting the public officer and for facilitating public monitoring.

Equally important is the establishment of a system to handle the declarations appropriately. When determining whether the public should have access to the declarations, one obvious consideration would be the importance of the public duty that the concerned officer is performing. For elected officials and politicians, the public generally expects their financial interests to be transparent. Managers and supervisors should carefully vet the declarations and take appropriate management actions. Where necessary, the public officer should be given appropriate advice, or instructions to divest his interest, or should be removed from the decision-making process, etc.

Within the civil service, the following “tools” are recommended:

- A code of conduct setting out the Government’s commitment to ethical practices and the management’s expectations of ethical behavior of its staff;
- Clear guidelines with examples of what constitutes conflict of interest and the procedures governing the declarations;
- Training and education to ensure that the officers understand the issues and follow the procedures;
- Designation of an ethics or compliance officer to ensure that staff follow the rules, and also to discuss gray areas and dilemma situations with staff; and
- Effective disciplinary actions in cases of non-compliance.

Public interest versus privacy—the proportionality test

One may argue that the requirement to declare one’s personal interest violates human rights, more precisely, the right to privacy. However, such a right has to be balanced against the public’s right to know, since public duty is involved. Lawyers have advised that such requirements are consistent with the Bill of Rights, provided that the extent of the declaration is commensurate with the need, and that it serves a legitimate purpose. This is commonly known as the “proportionality test”.

“Sanitization” upon retirement from public office

So far, we have examined how to manage conflict of interest while the official holds public office. Conflicts of interest may exist beyond this time, however. If a public official, upon retiring from office, immediately takes up an appointment in private business, the public is likely to perceive a potential conflict of interest. Hence in Hong Kong, China, a retired civil servant who intends to take up any employment or engage in any business activity within two years of retirement is required to obtain prior approval. The Government then assesses, with the advice of an independent committee, whether the proposed employment or business activity is likely to cause a conflict of interest. In the case of senior officers, as a matter of principle, a minimum “sanitization” period of six months must pass during which approval for post-retirement employment will not be given.

Role of the Hong Kong, China Independent Commission Against Corruption

The Hong Kong, China Independent Commission Against Corruption (ICAC) plays an important role in assuring that the rules described above are widely known and thoroughly respected. Under this mission, the ICAC prosecutes offenses, raises awareness and reviews practices and procedures with a view to reducing conflict of interest situations.

Criminal prosecution

In Hong Kong, any public official who accepts an advantage, which can take the form of money, a gift or a favor, in connection with his public duty is committing a corruption offense under the Prevention of Bribery Ordinance. Even if it cannot be proved that a bribe has been accepted, misconduct in public office (known as *malfeasance*) is a common law offense. Conflict of interest in its blatant form constitutes misconduct in public office. An important part of the ICAC’s job is to investigate, through its Operations Department, all corruption and *malfeasance* offenses and, if the Department of Justice decides to prosecute, to assist in the prosecution.

Ethical awareness

The ICAC also has a Community Relations Department, which, apart from educating the public about the evils of corruption, actively assists the government to raise ethical awareness in the civil service.

Transparent and accountable procedures

Another department of the ICAC, the Corruption Prevention Department, systematically reviews the practices and procedures of government departments to minimize the opportunities for corruption. An important strategy in the corruption prevention program is to promote transparent and accountable practices, and build in safeguards to minimize the possibility of the decision-making process's being compromised by officials' self-interest.

Through all these efforts, the ICAC launches a three-pronged attack on corruption. We have been fairly successful in containing corruption in Hong Kong, China. In the last Transparency International Corruption Perception Index (2003), Hong Kong, China was ranked the 14th least corrupt place among the 133 regions surveyed.

Recent cases of “misconduct in public office” in Hong Kong, China

A few cases that recently happened in Hong Kong, China illustrate how the ICAC deals with the offense of misconduct in public office.

Example 1

A directorate officer responsible for managing government buildings

- awarded government contracts amounting to USD20 million to a property management company owned by the brothers of his sister-in-law,
- failed to declare the relationship,
- awarded the contract to the company knowing that it did not fully meet the tender pre-qualification requirements, and
- was convicted and sentenced to 30 months' imprisonment.

Example 2

A senior professional officer responsible for civil service training

- awarded government contracts amounting to USD17,000 to her husband's printing company,

- failed to declare the relationship and manipulated the quotations received to favor her husband's bid, and
- was convicted and sentenced to seven months' imprisonment.

Example 3

A senior officer responsible for television and entertainment licensing

- awarded printing and production contracts amounting to USD30,000 to his wife's company,
- failed to declare the relationship and forged some quotations to favor his wife, and
- was convicted and sentenced to one year's imprisonment.

Apart from misconduct in public office concerning contract awards, the ICAC just dealt with a case involving a senior police officer prosecuted for accepting free sexual services from prostitutes and vice operators. Although the police officer at the time of the alleged offense was not directly involved in anti-prostitution duties, he was still convicted, as he was a senior police officer having an overall responsibility for law enforcement and fighting crime. In other words, had he not been the senior police officer that he was, he would not have been offered such free services—the so-called “capacity test.”

Other conflict-of-interest situations did not result in prosecutions. A case involved an ex-Commissioner of Inland Revenue who failed to declare conflict of interest when he personally dealt with tax cases handled by his wife's tax consultancy firm. Although a subsequent audit revealed no evidence suggesting that he had given favors to his wife's firm, the public perceived that there was a clear conflict of interest and protested. His service with the Hong Kong, China Government was subsequently terminated.

Conclusion

The importance for public officials of handling conflict of interest properly and carefully cannot be overestimated. Public expectations are rising, and public officials are increasingly called to account for their decisions. The public needs to be reassured that the decisions are made impartially, without self-interest.

Recent developments in other parts of the world have made this need for caution more apparent. More and more businessmen or executives become senior government officials and vice versa. Business models have changed: public-private-partnerships are now common in implementing public projects. The public and private sectors interact ever more closely, making it all the

more important that public policies and decisions are made—and are seen to be made—impartially and in the public interest.

Hong Kong China manages conflict of interest in the public sector reasonably well. The success factors are

- commitment to public accountability and transparency,
- a robust administrative system of declaration and management,
- effective deterrents and sanctions, and
- a vigilant public and media.

C. Putting Conflict-of-Interest-Policies into Practice: From Guidelines to Toolkit

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Serving the public is the fundamental mission of governments and public institutions. Citizens expect individual public officials to perform their duties with integrity, in a fair and unbiased way. Increasingly, governments are expected to ensure that public officials do not allow their private interests and affiliations to compromise official decision making and public management. In an increasingly demanding society, inadequately managed conflicts of interest on the part of public officials weaken citizens' trust in public institutions.

Conflicts of interest in both the public and private sectors have become a major matter of public concern world-wide. In government and the public sector, conflict-of-interest situations have long been the focus of specific policy; legislation and management approaches are meant to maintain integrity and disinterested decision making in government and public institutions. In the private sector, concern for integrity in business also has a long history, in particular for protecting the interests of shareholders and the public at large. Recent scandals have drawn attention to the importance of avoiding conflicts of interest that can arise when, for example, a public official leaves public office to take up a position in the business or non-governmental organization sector, or an accounting firm offers both auditing and consulting services to the same client, or a regulatory agency becomes too closely aligned to the business entities it is intended to supervise.

New forms of relationships have developed between the public sector and the business and non-profit sectors, giving rise, for example, to increasingly close forms of collaboration such as public/private partnerships, self-regulation,

interchanges of personnel, and sponsorships. New forms of employment in the public sector have also emerged, with potential for changes to traditional employment obligations and loyalties. In consequence, a potential is clearly emerging for new forms of conflict of interest involving an individual official's private interests and public duties. Growing public concern has put pressure on governments to ensure that the integrity of official decision making is not compromised.

While a conflict of interest is not *ipso facto* corruption, the recognition is increasing that conflicts between the private interests and public duties of public officials, if inadequately managed, can result in corruption. The proper objective of an effective conflict-of-interest policy is not the simple prohibition of all private-capacity interests on the part of public officials, even if such an approach was conceivable. The immediate objective should be to maintain the integrity of official policy and administrative decisions and of public management in general, recognizing that an unresolved conflict of interest may result in abuse of public office.

This objective can generally be achieved by ensuring that public bodies possess and implement policy standards for promoting integrity, effective procedures to identify risks and deal with emergent conflicts of interest, appropriate external and internal accountability mechanisms, and management approaches—including sanctions—that aim to ensure that public officials take personal responsibility for complying with both the letter and the spirit of such standards.

Managing conflict of interest

In a rapidly changing public sector environment, conflicts of interest will always be an issue of concern. A too-strict approach to controlling the exercise of private interests may conflict with other rights, may be unworkable or counter-productive in practice or may deter some people from seeking public office at all. Therefore a modern conflict-of-interest policy should seek to strike a balance by identifying risks to the integrity of public organizations and public officials; prohibiting unacceptable forms of conflict; managing conflict situations appropriately; making public organizations and individual officials aware of the incidence of such conflicts and by ensuring that effective procedures are deployed for the identification, disclosure, management and promotion of the appropriate resolution of conflict-of-interest situations.

OECD Guidelines for managing conflict of interest

Based on good practices in 30 countries, the Organisation for Economic Co-operation and Development (OECD) has developed the *OECD Guidelines for Managing Conflict of Interest in the Public Service*. While preparing these *Guidelines*, OECD identified the desirability of establishing a set of core principles, policy frameworks and institutional strategies for managing conflict-of-interest matters in the public service. The *Guidelines* were approved in the form of an OECD Recommendation to assist the efforts of OECD member countries in setting principles and benchmarks in this critical dimension of ensuring good public governance. The *Guidelines* can also provide general guidance for other branches of government, sub-national-level government, and state-owned corporations.

Core principles for managing conflict of interest

In the interests of maintaining public confidence in public institutions, the *Guidelines* reflect the fact that public officials, in dealing with conflict-of-interest matters, are expected to observe, in particular, the following core principles to promote integrity in the performance of official duties and responsibilities:

Serving the public interest

- Public officials should make decisions and provide advice on the basis of the relevant law and policy, and the merits of each case, without regard for personal gain (i.e., be “disinterested”). The integrity of official decision making, in particular in the application of policy to individual cases, should not be prejudiced by the religious, professional, party-political, ethnic, family, or other personal preferences or alignments of the decision maker.
- Public officials should dispose of, or restrict the operation of, private interests that could compromise official decisions in which they participate. Where this is not feasible, a public official should abstain from involvement in official decisions that could be compromised by their private-capacity interests and affiliations.
- Public officials should avoid private-capacity action that could derive an improper advantage from “inside information” obtained in the course of official duties, where the information is not generally available to the public, and are required not to misuse their position and government resources for private gain.

- Public officials should not seek or accept any form of improper benefit in expectation of influencing the performance or non-performance of official duties or functions.
- Public officials are expected not to take improper advantage of a public office or official position which they held previously, including privileged information obtained in that position, especially when seeking employment or appointment after leaving public office.

Supporting transparency and scrutiny

- Public officials and public organizations are expected to act in a manner that will bear the closest public scrutiny. This obligation is not fully discharged simply by acting within the letter of the law; it also entails respecting broader public service values such as disinterestedness, impartiality and integrity.
- Public officials' private interests and affiliations that could compromise the disinterested performance of public duties should be disclosed appropriately, to enable adequate control and management of a resolution.
- Public organizations and officials should ensure consistency and an appropriate degree of openness in the process of resolving or managing a conflict of interest situation.
- Public officials and public organizations should promote scrutiny of their management of conflict of interest situations, within the applicable legal framework.

Promoting individual responsibility and personal example

- Public officials are expected to act at all times so that their integrity serves an example to other public officials and the public.
- Public officials should accept responsibility for arranging their private-capacity affairs, as far as reasonably possible, so as to prevent conflicts of interest arising on appointment to public office and thereafter.
- Public officials should accept responsibility for identifying and resolving conflicts in favor of the public interest when a conflict does arise.
- Public officials and public organizations are expected to demonstrate their commitment to integrity and professionalism through their application of effective conflict of Interest policy and practice.

Engendering an organizational culture intolerant of conflicts of interest

- Public organizations should provide and implement adequate management policies, processes and practices in the working environment to encourage the effective control and management of conflict-of-interest situations.
- Organizational practices should encourage public officials to disclose and discuss conflict-of-interest matters and provide reasonable measures to protect disclosures from misuse by others.
- Public organizations should create and sustain a culture of open communication and dialogue concerning integrity and its promotion.
- Public organizations should provide guidance and training to promote understanding and dynamic evolution of the public organization's established rules and practices and their application to the working environment.

From policy design to implementation

Defining a policy approach to dealing with conflict of interest is an essential part of the political, administrative and legal context of a country's public administration. The OECD Guidelines do not attempt to cover every possible situation in which a conflict of interest might arise, but instead are designed as a general policy and practice reference that is relevant to a rapidly changing social context. The proposed measures are intended to reinforce each other to provide a coherent and consistent approach to managing conflict-of-interest situations. The key functions of this approach are:

- Definition of the general features of conflict-of-interest situations that may jeopardize organizational and individual integrity;
- Identification of specific occurrences of unacceptable conflict-of-interest situations;
- Leadership and commitment to implementation of the conflict-of-interest policy;
- Awareness that assists compliance and anticipation of at-risk areas for prevention;
- Appropriate disclosure of adequate information and effective management of conflicts;
- Partnerships with other stakeholders, including contractors, clients, sponsors and the community;

- Assessment and evaluation of a conflict-of-interest policy in the light of experience; and
- Redevelopment and adjustment of policy and procedures as necessary to handle evolving situations.

Sharing experience and developing a toolkit

In addition to the *Guidelines*, the OECD published a report on managing conflict of interest that highlights trends, approaches and models across 30 countries in a comparative overview and also presents examples of recent innovative solutions. Selected country case studies provide more details on the implementation of policies in national contexts and on key elements of legal and institutional frameworks. Moreover, the OECD has developed and tested conflict-of-interest management tools to provide a set of practical management strategies and processes that help managers in putting the *Guidelines* into practice. This resource package includes generic definitions, objective tests, checklists, generic provisions, model forms and training materials. Selected tools are provided below as examples.²⁰

TOOL #1: Objective tests for identifying a conflict of interest

This tool may be applied to

- identify conflict situations in specific detail,
- provide objective identification of relevant conduct/facts,
- provide a clear set of routines for teaching/training, and
- provide objective evidence for management of conflict situations.

The following tests provide a simple questionnaire-style framework for identifying the relevant features of conflict-of-interest situations in detail. Every public official should be trained to understand these tests, and every senior manager should be competent in applying them to real situations. Failure to do so will probably mean that conflict situations escape attention. Civil society organizations could also use these tools for the training of their members, and for conducting courses for, say journalists.

²⁰ More information on the tools is available on the OECD's website at http://www.oecd.org/document/53/0,2340,en_2649_34135_2516085_1_1_1_37447,00.html.

Conflict of interest situation (“actual”/”real” conflict of interest):	
Question 1	What official functions or duties is person X responsible for? [Refer to relevant official policy document, functional duty statement, law, or contract, and to the functional objectives of the official’s organization, etc.].
Answer	Person X is responsible for functions 1, 2, 3 (etc.) in ministry B.
Question 2	Does person X have private interests of a relevant* kind?
Answer	Yes [the relevant facts are known].
Conclusion	Person X has a conflict of interest.
* Comment:	<p>“Relevant interest” in this context usually means the private interest is relevant to the official’s position or functional responsibilities, <i>and</i> is</p> <ul style="list-style-type: none">• a private interest of such a kind that it could improperly influence person X’s performance of his or her assigned official duties (for example, family responsibilities, religious belief, professional affiliation, political alignment, personal assets or investments, debts, etc.); or• a private interest of such a value that it could improperly influence person X’s performance of his or her assigned official duties (for example, a business interest, or an opportunity to make a financial profit or avoid a loss, etc.).

TOOL #2: Generic checklist for identifying “at-risk” areas for conflict of interest

This tool may be applied for

- management action and
- training.

The following generic checklist is intended to be used by managers to identify those areas of their responsibility where the organization is at risk if conflict-of-interest situations occur. In each case, a “Yes” answer is desirable.

For most questions, an administrative procedure is necessary, to enable the risk of conflict-of-interest situations to be identified and reduced or managed effectively. Therefore, in the case of a “Yes” answer, the user should ask him/herself the question: “*What is the relevant administrative procedure, and is it effective?*” In the case of a “No” answer, the user should go on to ask him/herself the question: “*Why is no relevant administrative procedure in place, and what could be done to identify ‘at-risk’ areas for conflict of interest potential?*”.

1. Additional (“ancillary”) employment

- Has the organization defined a policy and related administrative procedure for approval of additional/ancillary employment?
- Have all staff been made aware of the existence of the policy and procedure?
- Does the policy identify potential conflict of interest arising from the proposed ancillary employment as an issue for managers to assess when considering applications for approval?
- Is there a formal authorization procedure, under which staff may apply in advance for approval to engage in other employment, while retaining their official position?
- Is the policy applied consistently and responsibly, so as not to discourage staff from applying for approval?
- Are approvals reviewed from time to time to ensure that they are still appropriate?

2. “Inside” information

- Has the organization defined a policy and administrative procedure for ensuring that “inside information,” especially privileged information obtained in confidence from private citizens or other officials in the course of official duties, and in particular commercially sensitive business information, taxation and regulatory information, personally sensitive information, law enforcement and prosecution information, and government economic policy and financial management information, is kept secure and is not misused by organization staff?
- Have all staff been made aware of the existence of the policy and procedure?
- Have all managers been made aware of their various responsibilities to enforce the policy?

3. Contracts

- Does the organization ensure that the staff involved in the preparation, negotiation, management, or enforcement of a contract involving the organization has declared any private interest relevant to the contract?

- Does the organization have the power, either under the law or by contractual provision, to cancel a contract if it is proved that any significant aspect of the contract was compromised by an unidentified conflict of interest or corruption involving the contractor?
 - Where a contract has been identified as compromised by an unidentified conflict of interest or corruption involving an official or former official of the organization, does the organization retrospectively assess other significant decisions made by the official in his/her official capacity to ensure that they were not also compromised by undeclared conflicts of interest?
- 4. Gifts and other forms of benefit**
- Does the organization's current policy deal with conflicts of interest arising from both traditional and new forms of gifts or benefits?^{a0}
Does the organization have an established administrative process for controlling gifts, for example by defining acceptable and unacceptable gifts, for accepting specified types of gifts on behalf of the organization, and for declaring significant gifts offered to officials?
- 5. Family and community expectations**
- Does the organization recognize the potential for conflicts of interest to arise from expectations placed on individual public officials by their immediate family, or by their community (including religious or ethnic communities), especially in a multi-cultural/pluri-cultural context?
- 6. "Outside" appointments**
- Does the organization define the circumstances under which a public official may undertake a concurrent appointment on the board or controlling body of an "outside" organization or body which is involved in a contractual, regulatory, partnership or sponsorship arrangement with their employing organization? For example,
 - a community group or a non-governmental organization,
 - a professional or political organization,
 - another government organization or body, or
 - a government-owned corporation or a commercial public organization?
 - Does the organization define an administrative process for authorizing such appointments, in which potential for conflict of interest issues is considered?
- 7. Business or NGO activity after leaving public office**
- Does the organization have the power, under the law or a contract of employment, to define conditions under which a former public official may undertake an appointment with an "outside" organization or body which is involved in a contractual, regulatory, partnership or sponsorship arrangement with the official's former employing organization?

- Does the organization actively maintain authorization procedures, under which a public official who is about to leave public office may negotiate an appointment or employment or other activity with a body where there is potential for a conflict of interest to compromise the organization?
- Where an official has left the organization for employment in a non-government body or activity without undertaking the provided approval process, does the organization retrospectively assess the decisions made by the official in his/her official capacity to ensure that those decisions were not compromised by undeclared conflicts of interest?

Comments: Tool #2 consists of a suite of related draft clauses, which reflect the approach taken by the fundamental definition of conflict of interest. The draft clauses focus on the key elements of a modern code of ethics or anti-corruption law for the public sector. With appropriate adaptation to suit the law and drafting conventions of the country concerned, these clauses could be used to give effect to the definition of conflict of interest advocated in this package, while at the same time making the relationship between conflict of interest, corruption, integrity and ethics clear.

TOOL # 3 Gifts and gratuities checklist
Tool Type: Open-ended Prescriptive Checklist
Application: Decision making, Training

Codes of conduct in the public sector often give a lot of attention to the issue of gifts. This prescriptive checklist reduces the confusion to four simple tests, arranged under the mnemonic “GIFT” to make it easier to remember. Each element of the “G-I-F-T” mnemonic recalls one of the principles of public ethics, rather than a set of complex administrative definitions and criteria or processes.

Gifts and gratuities checklist	
G enuine	Is this gift genuine, that is, offered in appreciation for something, which I have done well, in accordance with my functions as a public official, without any encouragement from me?
I ndependent	If I accept it, would a reasonable person be confident that I could be independent in doing my job in the future, especially if the donor of this gift is in some way involved or affected?
F ree	Could I always feel free of any obligation to do something in return for the gift from the donor, or for his/her family or affiliates?
T ransparent	Am I prepared to declare the gift in a completely transparent way, to my organization and its clients, to my professional colleagues, and to the media and the public in general?

Case studies

Case Study 1

You are a senior officer in the Corporate Services and Data Processing Division of your ministry. A contractor who has serviced the Ministry's computer equipment for the past two years offers you a computer to use at home—free of charge. Over the time, this person has become a close friend of yours. You do a lot of work for the Ministry at home, at the weekend especially, and the computer would be very useful. You cannot afford to buy a computer of your own. Your friend, the contractor, says the computer is fairly old, and so is not worth much: he says you can keep it for as long as you want to. You accept the offer. The Ministry computer equipment service contract is due for renewal in three months' time, and you will be on the committee which will decide on the winning contract. Would you accept the offer from your friend? Why?/Why not?

Case Study 2

You are the chief Counter-Corruption Officer for the federal ministry of justice: your deputy minister has overall responsibility for the Ministry's current major review of the national Criminal Code. A consultant from the company which is advising on the review project asks you whether it would "cause difficulties" if the company were to invite your deputy minister to attend the forthcoming Soccer World Cup finals in a neighboring country. The consultant says that the company would provide the airfares and accommodation, and the deputy minister would also be a guest in the company's corporate hospitality tent at the stadium, which would give the deputy minister a good opportunity to meet other junior ministers from neighboring countries who will also be there. The deputy minister is very keen on soccer, and is a former president of your country's national soccer federation. Is a conflict-of-interest issue involved in this offer?

Case Study 3

You overhear a conversation between two staff members from another section of your organization in the washroom, in which one employee claims, laughing, that she had recently gotten her supervisor to recommend her promotion by agreeing not to report that the supervisor has been taking bribes from citizens (to escape prosecution for traffic offenses). As a supervisor, you

Case studies (*continued*)

know that the new government is about to make bribe-taking a serious criminal offense. Your ministry has recently introduced a strict policy to reduce bribe-taking by employees, which includes requiring its supervisors to set an example to other staff. You are also aware that the supervisor concerned is very popular among his staff and the senior management of the organization. Is there a conflict of interest in this situation?

Case Study 4

You discover that, for the last two years, a close friend at work has been stealing small amounts of cash and altering official financial records to disguise the thefts, and taking office supplies from your government ministry. She has been selling the supplies at the market in the next town. Because of the ministry's extremely poor accounting systems, no one suspects that anything is wrong. Your friend has a sick husband and a young family to support and her salary as a civil servant is too low for a family to live on. Is there a conflict of interest in this case?

Case Study 5

As part of his official duties, an official driver is required to use the ministry's vehicle to deliver messages and to carry out official errands. His job requires him to be "on call" and away from the ministry for lengthy periods on most days, and he is trusted to carry out his duties with minimal supervision. The driver has been with the Ministry for many years, and has never been in any trouble. Because of the flexibility of the driver's work arrangements, he finds it easy to carry out personal business, such as paying bills, shopping, or taking family members to and from school, during the working day. As he still gets his official work completed, is it acceptable for the driver to carry out his private business in the ministry's vehicle? Case Study 6As manager of the section, you are asked to act as chair of the selection committee for a vacant permanent position in your section. One of the applicants is from outside the ministry, and is socially a friend of yours, as you are related by marriage to the applicant's husband. This is not known to the other members of the selection panel. You decide that you will not allow this relationship to influence your judgment. You decide to tell the panel members that you will stand aside from the final assessment of your friend, but as chair you will make the final decision in accordance with the views of the committee. Is this an appropriate solution?