

Chapter 6

Conflict of interest in the public sector

Rapid changes in the public sector environment of Asian and Pacific countries, such as the emergence of new models of cooperation with the business sector, public-private partnerships, and increased mobility of personnel between the two sectors, have multiplied grey zones where public officials' private interests can unduly influence the way they carry out their official duties. If not adequately identified and managed, conflict-of-interest situations can lead to corruption. A growing number of countries have come to recognize the need to develop or substantially modernize their regulations, institutions, and practices, particularly in areas that present specific risks for corruption. Appropriate policies regulating conflict-of-interest situations arising in post-public employment situations are attracting growing attention in some of the Initiative's member countries.

In response to these concerns about conflict-of-interest situations and the resulting risk of corruption, the OECD has developed the OECD Guidelines for Managing Conflict of Interest in the Public Service. These Guidelines constitute a set of core principles, policy frameworks, institutional strategies, and practical tools from which countries may benefit when establishing, amending, or reviewing their conflict-of-interest policies. As this chapter shows, some Asian and Pacific countries have also begun work to develop frameworks for identifying and managing conflict-of-interest situations.

Pairote Pathranarakul of the National Institute of Development Administration of Thailand shares his country's experience with conflict-of-interest situations at both operational and political levels. He reports, many conflict-of-interest situations arise from informal relationships, notably involving relationships between officials' relatives or between

patron-clients. Thailand has made various efforts to build constitutional and legal checks against the incidence of conflict of interest. Thailand's new constitution contains specific provisions on conflict of interest for government officials and parliamentarians. Public sector reform, anti-corruption measures, and initiatives of civil society organizations have helped build awareness and have stimulated capacity building and reform. However, these efforts take place in a particularly challenging environment. Public awareness of conflict of interest is considerably low; corruption and rent seeking by public officials even appear to be socially acceptable to some; and mechanisms designed to prevent such conflicts are undermined by the domination of high-ranking officials or politicians.

Today, preventing and managing conflict of interest have become important tasks in anti-corruption in the People's Republic of China, as reported by Cheng Wenhao from the anti-corruption and governance research center of Quinghua University. These tasks have been undertaken in an ever-changing environment in the 20 years since China opened up to the outside world. Public officials running businesses to supplement their revenue constitute a good example of an emerging phenomenon with important potential conflicts of interest. This trend triggered an initial separation of government functions and business in the mid-'80s that has steadily evolved over the last 20 years, becoming more specific and covering a wider scope. Later regulations extended these restrictions to relatives and close friends of public servants, and a series of regulations intensified the control of enterprises and businesses. Today, the People's Republic of China's conflict-of-interest policies address simultaneously public agencies, public servants, and their relatives and close friends. To keep up with changes at the national and international levels, the People's Republic of China will continue to develop its framework for managing conflict of interest, building on foreign countries' experience and assistance.

Hong Kong, China has developed a host of mechanisms to manage conflict-of-interest situations in the public sector. Thomas Chan, from Hong Kong, China's Independent Commission against Corruption (ICAC), describes a robust system whereby public officials complete declarations of interest, notably financial interests, to ensure openness and accountability. Public access to these declarations, a code of conduct setting out ethical practices and expectations, guidelines and training, and disciplinary and criminal sanctions for non-compliance are also among the measures taken to address conflict of interest. As in other countries, these instruments are constantly challenged by the steady evolution of the environment in which public officials operate and the public's expectations about ethical behavior. Employment in the private sector

that follows an assignment in the public service is a prominent example of a challenging emerging issue, and Hong Kong, China, is one of the first to address it by requiring prior approval or, for senior officials, minimum “sanitization” periods. ICAC plays a prominent role in the enforcement of ethical conduct, in awareness raising, and in the development of transparent procedures that prevent opportunities for corruption.

Conflict of interest: An ethical issue in public and private management

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Introduction

Conflict of interest is a complex issue that reflects the structural problems of any civilized society. It relates to several facets including the socio-cultural, political, and administrative. If government officials lack the ethical foundation to protect values and cultural systems, then they lack the consciousness to protect the public interest. Abuse of power by interfering in development policies, projects, and economic activities is common. The abuse of political and administrative power for self-interest, whether by an individual, group, or party, has damaged public and private sector organizations, the general public, and society as a whole. It also destroys future opportunities for sustaining long-term socio-economic development.

Thus, it is high time to raise public awareness among the agencies concerned, both local and international, and to seek joint efforts to prevent and protect against the negative effects arising from conflict of interest. It is indeed an urgent task of policymakers, government leaders, advocates, and all partners to rethink and renew our consciousness with new values and a new cultural framework. Enhancing the governance system of political and administrative organizations and promoting ethical standards among key actors to ensure transparency and accountability for the sake of public interest are top priorities. Public forums with this agenda, at the national, regional, and global level, are necessary for a better understanding of conflict of interest. Policy measures on values and cultural reform, and specific laws, should be seriously addressed through close collaboration among the public, private, and civil society sectors.

“Conflict of Interest” Defined

Michael McDonald defines the term “conflict of interest” as “a situation in which a person, such as a public official, an employee, or a

professional, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties.”¹

According to McDonald, conflict of interest has three key elements: (1) a private or personal interest, often a financial interest; (2) official duty, or the duty one has because of one’s office or official capacity; and (3) interference with objective professional judgment. McDonald emphasizes that conflict of interest is an ethical issue. Whenever the official lacks ethical standards there is potential risk of conflict of interest.

Conflict-of-interest typologies are the work of Canadian political scientists Ken Kernaghan and John Langford. In their book *The Responsible Public Servant* they list seven categories:

- **Self-dealing.** One instance is using an official position to secure a contract for one’s own consulting company. Another is using a government position to get a summer job for one’s daughter.
- **Accepting benefits.** Bribery is one example; substantial (non-token) gifts are another, as in the case of a purchasing agent for a department accepting a case of liquor from a major supplier.
- **Influence peddling.** The professional solicits benefits in exchange for using his or her influence to unfairly advance the interest of a particular party.
- **Using the employer’s property for private advantage.** This could be as blatant as stealing office supplies for home use. Or it might be as a bit more subtle, say, using software licensed to the employer for one’s private work.
- **Using confidential information.** Learning, through work for a private client, that the latter is planning to buy land in one’s region, one quickly buys land in the region, perhaps in the name of one’s spouse.
- **Outside employment or moonlighting.** An example would be setting up a business on the side that is in direct competition with one’s employer. Another case would be taking on so many outside clients that one doesn’t have the time or energy to devote to one’s regular employer. Or, in combination with influence peddling, a professional employed in the public service might sell private consulting services to an individual, assuring the latter of benefits from government: “If you use my company, you will surely pass the environmental review.”
- **Post-employment.** A person resigns from public or private employment and goes into business in the same field. For example,

a former public servant sets up a practice lobbying the department in which he was employed.

Five main factors can be considered as contributing to conflict of interest: the individual factor, which comprises personal values, beliefs, attitudes, and behavior; the economic factor, which involves the official's income and indebtedness; the social factor, such as societal values, moral and ethical framework, position in society, patronage system and nepotism, and role models among top leaders and supervisors; the legal factor, comprising rules and procedures (opportunities to take advantage of conflicts of interest would flourish in an environment with outdated laws with legal loopholes or the absence of the rule of law and an auditing system); and the environmental factor, which includes the organizational culture, and expectations and traditional practices among government officials.

Ethics, Morality, and Conflict of Interest

Bandfield, in *The Moral Basis of a Backward Society*,² after studying cultural conditions and moral standards, concluded that an individual may not necessarily succumb to temptation if the household or institution to which he or she belongs upholds the values of public-spiritedness or enlightened self-interest. Bandfield also pointed out that amoral society members tend to neglect public interest and are always driven by self-interest.

In *Moral Hazards of an Executive*,³ Norris addresses the ethics and morality of executives, emphasizing that integrity and loyalty are prerequisites for organizational achievement. A key issue is whether the executive decides for the sake of the general public or of the inner group. The principles of moral democracy dictate that executives must uphold public values in their decisions and actions. In practice, however, the principle of "the greatest good for the greatest number" does not always work to the satisfaction of everyone or even the majority. Executives are, moreover, often faced with ethical issues and conflicting circumstances. But they must at least be aware of their responsibility to acts for the common good.

Conflict of interest is one type of corruption. Defined as the abuse of public office for private gain, corruption generates problems of social equity.⁴

Following Heidenheimer (1978), Thai political scientist Somporn Saengchai⁵ classified corruption into three main types:

- **White corruption.** The general public sees this type of corruption as common and allows it to happen because it has no serious effect on society.
- **Grey corruption.** The general public is still unclear about the process and impact of this type of corruption. Academics think it is a serious issue but the general public seems to be reluctant to think so.
- **Black corruption.** Society deems this to be grave misconduct that must be punished according to the law.

Conflict of interest lies in the grey area of corruption.⁶ It relates to ethical standards and social values. Each society judges human actions with different value systems. Some people may not perceive conflict of interest as misconduct, but civilized society cannot bear violations of moral and ethical behavior.

Conflict of Interest: Thailand's Experience

Understanding conflict of interest

Academics and experts perceive conflict of interest as a conflict between private and public interest. It is equivalent to policy corruption or overlap between private and public benefits. It is serious if it destroys the people's welfare and national benefits. Some view conflict of interest as a Western value; however, they accept it as a standard practice among international communities.

Conflict of interest can be considered in the narrow or the broad sense. Taken in the narrow sense, the problem is seen to be susceptible to mitigation through new, stricter laws or new institutions to monitor and deal with it. In a broader sense, conflict of interest is seen as policy corruption where decision making, particularly by industry or business entities, always involves conflict between personal and group interests. The policy corruption often surfaces in development programs and projects, especially procurement in megaprojects.

It is agreed that conflict of interest leads to corruption, and that the greater the interference from the interest group, the more severe the case is. Most cases are directly or indirectly linked with political power, both formal and informal. In Thai society, the abuse of power is connected

with legal procedures and informal relationships. Conflict of interest thus involves kinships.

Academics and other experts view conflict of interest at two levels: the policy level, involving the state power of policymakers; and the operational level, where government officials seek private benefits from official duties. Conflict of interest depends on the degree of political development and political accountability. Thai politics is not progressive enough to address the public interest in the true sense. Some agencies may use power not for the sake of the people but to expand and protect their own interests. Some politicians buy votes to gain powerful positions and use those positions to advance their interests.

Conflict of interest at the operational level depends on opportunity and position, and opportunities are rife in procurement, where, despite advances in systems, interest-seeking behavior often prevails. The conflict arises when the various roles adopted by the same person are thinly separated and official duties are affected. For instance, a highway construction regulator might work after hours as a consultant to one of the construction companies supervised.

In summary, conflict of interest arises because of various factors:

- Centralized state power and money politics, leading to actions to maintain the status quo;
- Rules and regulations inadequate for coping with conflicts of interest;
- Not enough policy measures to protect the public interest—hence, the potential for human rights violations;
- Political intervention in policy formulation and implementation; and
- Weak ethical standards of society.

Thai society does not fully pay attention to the problem. The general public perceives conflict of interest as not much related to their national values. Some people think it is common for government officials to cheat without any social blame attached. That is why conflict of interest persists. It is unfortunate that those involved in misconduct related to conflict of interest deny any wrongdoing. Instead, they say that it is the duty of the public to prove abuse of power. This is because, under Thai social norms, people generally pay attention to formal laws, not to conflict-of-interest principles and ethical standards.

Public awareness of conflict of interest is quite low since the cultural and values systems are not strong. The commitment of policymakers and

government officials to the public interest, which should be a matter of social awareness and core belief, is illusory. Conflict of interest is one of the most complex issues in society, and there is no easy access to information on conflict-of-interest cases. Studies are relatively rare. Most of the available data come from mass media. The general public has no clear understanding of the pattern and forms of conflict of interest. People do not clearly perceive such cases as corruption, or else they think of conflict-of-interest violations as legalized corruption.

It is agreed that conflict of interest is a critical problem in Thai society. It arises when there are close ties with state power. Through patronage, an association with power through informal relationships can protect patron-client relationships and shared benefits among cronies, cliques, groups, and parties. The point is the fuzzy line between public and private interest. Thus, under the patronage system, some politicians and government officials misuse their official powers to seek private benefits from society.

Government officials among whom there are potential risks of conflict of interest can be categorized into these five occupational groups:

- Officials of provincial, municipal, or district administration;
- Officials who rely on discretion in auditing (like accountants) and tax collection (such as revenue, customs, and excise tax officers);
- Independent professionals such as physicians, pharmacists, engineers, and architects;
- Academics and professionals such as teachers, instructors, researchers, analysts, and consultants; and
- Officials who work in justice affairs, including the police, correction officers, attorneys, and judges.

Common types of conflict of interest among government officials are:

- Self-dealing;
- Acceptance of benefits such as substantial gifts or valuable assets in exchange for advancement in official posts and, conversely, use of money or valuable gifts to buy a higher position or promotion;
- Influence peddling;
- Use of public property such as a public car for private business;
- Use of confidential information about development policies and projects to advance private interests; and

- Post-retirement employment of high-ranking officials; and
- Abuse of power in favour of relatives and clients in bidding contracts in government agencies.

Current Efforts to Manage Conflict of Interest in Thai Society

Various efforts are being made in Thailand to deal with corruption and conflict of interest.

First, Thailand's new constitution⁷ clearly prohibits conflict-of-interest violations. Specific provisions require government officials to be politically impartial (Section 70, Chapter IV) and prohibit members of the House of Representatives from placing themselves in situations where conflicts of interest could arise.

Section 110 (Chapter VI) clearly states that a member of the House of Representatives shall not:

- Hold any position or have any duty in any state agency or state enterprise, or hold the position of member of a local assembly, local administrator, or local government official or other political official other than minister;
- Receive any concession from the State, a state agency, or state enterprise, or become a party to a contract of the nature of an economic monopoly with the State, a state agency, or state enterprise, or become a partner or shareholder in a partnership or company receiving such concession, or become a party to a contract of that nature; or
- Receive any special money or benefit from any state agency or state enterprise apart from that given by a state agency or state enterprise to other persons in the ordinary course of business.

Section 111 states: "A member of the House of Representatives shall not, through the status or position of member of the House of Representatives, interfere or intervene in the recruitment, appointment, reshuffle, transfer, promotion and not being a political official, an official or employee of a State agency, State enterprise or local government organization, or cause such persons to be removed from office." By virtue of section 128, this provision also applies to senators.

Second, public sector reform has pushed public agencies to act as catalysts for change through capacity building with strategies for structural, legal, and values and cultural reform, among others.

Third, anti-corruption measures have been promoted through workshops and seminars, both at the national and organizational level, to improve understanding of corruption problems among stakeholders.

Fourth, civic groups in partnership with voluntary associations, non-governmental organizations (NGOs), and civil society organizations (CSOs), are educating the general public and taking the lead in improving governance, both political and administrative. In addition, independent public organizations and mass media groups actively monitor the transparency and accountability of policymakers and government officials.

Fifth, at the initiative of the Foundation of a Clean and Transparent Thailand (FaCT), an awareness-raising program of good governance has been launched. The program is aimed at raising consciousness of accountability and conflict of interest among Thai people from all walks of life, including politicians, government officials, businessmen, and the public at large. To achieve this, program leaders are making efforts to raise ethical and moral standards, and campaigning for public participation in protecting the public interest and refraining from corruption of all types. The program is expected to inspire cooperation among anti-corruption movements in Thai society.

Conclusion and Recommendations

In conclusion, conflict of interest is a form of corruption since it is the use of official authority for personal gain. Conflict of interest violates the country's laws and code of public ethical conduct. Where personal advantage is involved, conflict of interest leads to manipulation of authority to influence decisions for private interest. This unethical practice has negative effects on public services since it compromises independent decision making, neutrality, and moral standards. It hurts the interests of the agency, the organization, the institute, and society. The loss may be in the form of financial assets, quality of services, and future opportunities. Conflict of interest also destroys equity and other values and norms of a given society.

Conflict of interest is a key ethical issue in public and private management and has significant association with corruption. It relates to conflicts between authorities, roles, and values in decision making. Conflict of interest can occur at two levels: policy and operational. At the policy level, policymakers intervene in decisions for their own benefit, direct or indirect. At the operational level, officials use official capacities to advance their personal interests.

Several factors determine opportunities for conflict of interest, including, among others, private interest, weak ethical standards, discretion in the use of power, and the lack of clear guidelines for official practices. Inefficient law enforcement and the lack of effective measures to protect the common benefits of the society are also crucial factors. Besides, conflict of interest is correlated with the Thai political structure, where the patronage system allows businessmen to be involved in politics and to siphon benefits from society.

Measures to improve the situation include strengthening ethical standards of behavior among government officials at the policy and operational level. Raising public awareness through socialization among new officials in both public and private organization is vital. The international community must make joint efforts to raise professional and ethical standard among policymakers and officials.

The following specific measures are proposed: encouraging organizational leaders of all types to act as catalysts for change or change leaders in enhancing professional ethics and integrity in public and private organizations; putting the conflict-of-interest issue on the national agenda and earnestly pushing implementation efforts together with people's organizations; and developing guidelines for managing conflict of interest in the public service, in both political and governmental organizations.

Notes:

This paper is based on the author's research paper Conflicts of Interest: Study on Public Sector Professional Groups (2004), a research project supported by the Ethics Promotion Center, Civil Service Commission of Thailand.

- 1 www.ethics.ubc.ca/people/mcdonald/conflict.htm
- 2 Bandfield, Edward C. 1967. *The Moral Basis of a Backward Society*. New York: the Free Press.
- 3 Norris, Louis William. 1989. Moral Hazards of an Executive. In *Ethics in Practice: Managing the Moral Corporation*. Edited by Kenneth R. Andrews. Boston, Massachusetts: Harvard Business School Press.
- 4 White, Thomas I. 1993. *Business Ethics: A Philosophical Reader*. New York: MacMillan Publishing Company.
- 5 Somporn Saengchai. 1985. Corruption: Theory and Reality. *Thai Political Science Journal* 11 (June–December).
- 6 Anechioco, Frank, and James B. Jacobs. 1996. *The Pursuit of Absolute Integrity*. Chicago: University of Chicago. Pages 45–62.
- 7 1997 Constitution of the Kingdom of Thailand.

Managing conflict of interest in the public sector: The approach of Hong Kong, China

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Introduction

We all manage conflict of interest in our routine daily life, e.g., we enjoy eating but want to remain slim. Usually we are able to manage our personal interest on our own, and people don't care how we do it.

It is, however, a completely different matter when it comes to our public life. 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 interest not to compromise the way he discharges his public duty. In other words, the public interest comes first. In fact, there are increasing public expectations that governments should ensure that public officials do not allow their private interests and affiliations to compromise official decision making.

It is therefore important, from government's point of view, and indeed from everyone's point of view, that conflict of interest should be managed properly. We have seen so many cases where conflict-of-interest scandals undermined the credibility of individuals, institutions, and governments. So many promising public service careers were destroyed because the conflict was overlooked, sometimes out of sheer ignorance or stupidity.

The Public Sector

In Hong Kong the public sector comprises the civil service and other principal officials appointed under the Basic Law. There are also the Legislative Council (which is the law-making body), and the District Councils (which represent the local communities). In addition, we have a string of advisory boards and committees that advise the Government in many areas of public administration.

Other public bodies in Hong Kong include statutory regulatory bodies (e.g., the Securities and Futures Commission) and other public-funded institutions (e.g., the universities).

Together I refer to them as the public sector in Hong Kong. I believe many countries have similar public sector institutions.

Managing Conflict of Interest

So, how do we deal with this important, topical, controversial, and sometimes difficult issue?

It is important that we define what constitutes conflict of interest. In Hong Kong, we have a simple definition. As spelt out in civil service regulations, 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”. But what exactly constitutes “conflict” can sometimes be a matter of contention.

From the outset, we should recognize that conflict of interest is largely a “perception” issue. That is, it is not a matter of whether you think you have done the right thing. What matters is whether the public thinks you have done the right thing. When determining whether a conflict of interest has arisen, one test we can practically apply is whether you are prepared to discuss the situation openly—the so-called “sunshine test”. In the last analysis, the onus is on you to prove that you have acted properly.

And perception is a living issue. That is, public perceptions change over time. A certain act that was acceptable 10 years ago may no longer be acceptable now. It therefore follows that the public official must always stay vigilant about current public perception and expectations, and appropriately adjust his or her way of dealing with possible conflict between public and private life.

Conflict of interest being a perception problem, openness and accountability is the obvious answer. A robust system of declaration of interest by public officials is the key to assuring the public that they have acted impartially and in the public interest. Such declarations should be documented and should cover:

- Declaration of financial interests. This should include investments in land and property, and shareholdings and directorships in companies. This is particularly important with public officers who have access to market-sensitive information, e.g., those who make fiscal policies and decisions, or are involved in the regulation of 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 a brother is one of the tenderers, or when a land lease is being granted to a social club of which the approving officer is a member.

We also need a system to appropriately handle the declarations:

- We should consider whether the public should have access to the declarations. Obviously one consideration would be how influential the public official is and how important is the public duty being performed. For senior civil servants, elected officials, and politicians, the public generally expects their financial interests to be made transparent.
- Managers and supervisors should carefully vet the declarations and take appropriate management actions. Where necessary, the public officer should be given appropriate advice, including instructions to divest interest or remove himself or herself from the decision-making process.

Within the civil service, the following “tools” are useful in managing conflict of interest:

- A code of conduct setting out government’s commitment to ethical practices and the management’s expectations of ethical behavior of its staff.
- Clear guidelines with examples of what constitute conflict of interest, and the procedures governing the declarations.
- Training and education to ensure the officers understand the issues and follow the procedures.
- The designation of an ethics or compliance officer to ensure that staff follow the rules, and also to discuss grey areas and dilemma situations with staff.
- Effective disciplinary/criminal sanctions for non-compliance.

Public interest versus privacy: The proportionality test

Some may argue, with some justification, that the requirement to declare one’s personal interests is inconsistent with human rights, i.e., 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 us 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”.

Post-service employment

So far, we have examined how we can manage conflict of interest while in public office. But it should not stop there. 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. In Hong Kong, 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 for doing so and the Government will assess, with the advice of an independent committee, whether the proposed employment or business activity will cause a conflict of interest. In the case of senior officers, as a matter of principle, there is a minimum “sanitization” period of six months during which approval for post-retirement employment will not be given.

Role of Hong Kong ICAC

Criminal sanctions

In Hong Kong, any public official who accepts an advantage, which can be in the form of money, gifts, or favors, in connection with his public duty is guilty of corruption 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 offence. Conflict of interest in its blatant form constitutes misconduct in public office. An important part of ICAC’s job is to investigate, through its Operations Department, all corruption allegations and, if the Department of Justice determines that prosecution is warranted, assist in the prosecution.

Ethical awareness

We also have a Community Relations Department, which, apart from educating the public about the evils of corruption, actively assists the Government in raising 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 to build in safeguards to minimize the possibility that the decision-making process will be compromised by self-interest.

Through all these efforts, the ICAC has launched a three-pronged attack on corruption. We have been fairly successful in containing corruption in Hong Kong. In the last Transparency International Corruption Perception Index, Hong Kong was ranked the 16th-least-corrupt place among the 146 regions surveyed.

Misconduct in Public Office

As stated above, conflict of interest in its blatant form constitutes “misconduct in public office”, which is a criminal offence under the common law. This common-law offence, which has its origin in the 18th century, had been rare in Hong Kong until recent years. In a recent court case, the Court of Final Appeal of Hong Kong elaborated on the elements of the offence. According to the judgment, misconduct in public office arises when a public official, in the course of or in relation to his or her public office, willfully misconducts himself and the misconduct is serious. The misconduct can be an act or omission, for example, willful neglect or failure to perform one’s duty without reasonable excuse or justification. The seriousness of the misconduct has reference to the responsibilities of the office and the officeholder, the importance of the service, and the nature and extent of departure from those responsibilities.

So far we have prosecuted 19 cases of misconduct in public office: 7 acquitted, 11 convicted, and 1 ongoing. The following are a few recent cases in Hong Kong that illustrate how we dealt with this kind of wrongdoing.

Case 1

A directorate officer responsible for managing government buildings—

- awarded government contracts amounting to USD 20 million to a property management company owned by the brothers of his sister-in-law;
- knew that the company did not fully meet the tender requirements; and
- failed to declare the relationship.

The officer was convicted and sentenced to 30-month imprisonment.

Case 2

A senior officer responsible for television and entertainment licensing

- awarded printing and production contracts amounting to USD 30,000 to his wife's company; and
- failed to declare the relationship and forged some quotations to favor his wife.

The officer was convicted and sentenced to one-year imprisonment.

Case 3

The chairman of a licensing board

- persuaded license applicants to hire a close personal friend as their representing lawyer; and
- failed to declare his relationship with the lawyer and improperly provided confidential documents to her.

The chairman of the licensing board was convicted and sentenced to one-year imprisonment.

Case 4

A senior police officer who accepted free sexual services from prostitutes and vice operators was convicted and sentenced to two-year imprisonment.

Although the police officer at the time of the alleged offence was off-duty and was not directly involved in anti-prostitution duties, he was still convicted, as he was a senior police officer with overall responsibility for enforcing the law 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.

Disciplinary Cases

There have also been other conflict-of-interest scandals that did not result in prosecutions. A case involved a senior tax official who failed to declare a conflict of interest when he personally dealt with tax cases handled by his wife's tax consultancy firm. Although subsequent audit revealed that there was no evidence to suggest that he had favored his

wife's firm, the public perceived that there was a clear conflict of interest and protested. The Hong Kong Government subsequently terminated his employment contract.

Conclusion

In conclusion, I would like to reiterate the importance for public officials to handle conflicts of interest properly and carefully. Public office is public trust. Public expectations are rising, and public officials are increasingly being called to account for their decisions. The public needs to be reassured that the decisions are made impartially without self-interest.

Some recent world developments have made this need for caution more apparent. We now see more and more successful private sector businessmen or executives becoming senior government officials and vice versa. Business models have changed: the public-private partnership approach is now commonly used in implementing public projects. The public sector and private sector are now much more interactive, and this makes it all the more important that public policies and decisions are made impartially and in the public interest, and perceived to be so.

Monitoring and preventing conflict of interest among public servants in the People's Republic of China

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Conflict of interest in this paper refers to the clash between the public interest, represented by public servants, and their personal interests. Public servants in China hold public power and resources and should use these to serve the public interest. However, as individuals, they do have some personal interests. If the public servants were to mingle their personal interests with the public interest in performing their public duties, the public interest and resources they hold will inevitably deviate from the public objective and degenerate into a tool for their personal interests. Therefore, conflict of interest is a form of dissimulation of power.

Conflict of interest is also a source of corruption. The broadest definition of corruption in public service refers to the practice of public servants of taking advantage of public power for personal gain. Conflict of interest falls under this category. Many instances of conflict of interest do not necessarily come from conflict between public and private interests but from the fact that some public servants allow their personal interests to extend into the public sphere and make use of public authority to seek illicit gains for themselves. In this case, conflict of interest leads to corruption.

In the more than 20 years that China has carried out reform and opened up to the outside world, conflicts between public servants' personal interests and the public interest have increased and have taken many forms. More and more, the conflicts are concealed. Under such circumstances, governing and preventing conflict of interest has become an important task in the anti-corruption campaign and in the promotion of clean and honest government in China.

China's efforts to prevent conflict-of-interest violations have been carried out on three levels: at the level of the public entities, the public servants, and their relatives and close friends. Both the Communist Party and the Government hold public authority. Once this authority is abused for profit, whether the profit goes to a public organization or an individual, there is obviously a conflict-of-interest violation. In many cases, particularly

in recent years, relatives and close friends also gain from the power of public servants by being appointed to certain positions to protect the illicit profits from power. Therefore, it is absolutely necessary to extend the measures for the prevention of conflict of interest to the public servants' relatives and close friends.

In or around 1984, with the push toward a market economy, some government officials, including leading officials of certain counties and municipalities, started setting up and running enterprises with urban residents, rural peasants, or job-hunting youths, and used the profits to fatten their own salaries. To cope with this, the General Office of the State Council issued a Notice on 17 July 1984 to the effect that, in the reform of the economic system, there must be separation between government and enterprises, and public servants must be separated from businessmen and from industry. Allowing public servants to run the enterprises could weaken government economic leadership and lead to people scrambling for their own interests. It could result in the establishment of monopolies backed by the public power, and this would not be conducive to reviving the economy.

The Notice said that such practices would no longer be tolerated. For the enterprises that had already been set up, public servants should take proper steps to gradually withdraw from those enterprises or, if not, to resign from government. Meanwhile, so as not to cause misunderstanding, the Notice expressly prohibited the use of the following slogan: "Let government public servants also become rich as soon as possible!"

The issuance of the Notice had some positive results. But its implementation was far from thorough. In some places, the practices persisted. The Central Committee of the Communist Party and the State Council therefore jointly issued on 3 December 1984 the Decision on Strictly Forbidding the Party and the Government Organs and their Officials from Engaging in Trade and Business.

The Decision pointed out that the Party and government organs at all levels, and the economic departments and their leading officials in particular, should more correctly lead and organize for economic reform, stick to the principle of separation of government from private enterprise and separation of public servants from businessmen, and be clean and honest, and fair and decent. They should faithfully serve economic development, national prosperity, and the wealth and happiness of the people. They were strictly forbidden from abusing their power to run enterprises and businesses in violation of the Party's and the Government's Decision, to seek illicit profits for themselves at the expense of the ordinary people's interests.

To realize the above-mentioned requirement, the Decision stipulated that the Party and government bodies could not use public funds, loans, or their own funds to set up and run enterprises by themselves or with private citizens, or receive dividends from stock shares; nor could they join private enterprises. They were also prohibited from using their power to seek profit for the enterprises of their relatives and close friends.

The Decision explicitly stipulated that officials of the Party and the Government could be allowed to run enterprises and businesses if they applied for it, but they could not keep their government position or their salary and welfare benefits as public officials.

Clearly then, as early as 1984, when the economic reform had just been launched in the urban areas of China, the central Government already had a deep knowledge of the ill effects of public entities and public servants running enterprises and businesses, and had systematically figured out ways to cope with the practice.

To further solve the problem of government involvement in business, the State Council issued on 20 August 1985 the Notice on Further Clearing Off and Reorganizing Companies, which clearly emphasized the separation between the Government and public servants, on the one hand, and those running the enterprises, on the other, as well as between those running an enterprise and its finances. The Notice, once again, reminded government officials who were running enterprises to leave the enterprises or resign from public office.

Most of the enterprises run by the Party and government organs have either stopped operation or separated themselves from the public organs, and most of the public officials working in enterprises have either returned to government or quit public office. However, this unhealthy tendency has not completely stopped. Some officials of the Party and government entities still found ways to continue running enterprises or to take concurrent positions in the enterprises. Some dependents of public servants took advantage of their relationship and the influence of the officials to run enterprises. Seeking illicit gains and gaining personal profits at the expense of the public interest in this way is exceedingly harmful.

To stop this unhealthy tendency once and for all, the General Office of the Central Committee of the Communist Party and the General Office of the State Council jointly issued on 4 February 1986 the Regulations on Further Stopping the Party and the Government Organs' Running of Enterprises and Businesses. The Regulations once again prohibited Party and government organs—including the various agencies of the Party Committee and the State, public administration, justice, and the procurator at all levels and their subordinate institutions—from running enterprises.

Enterprises still operating in violation of the Regulations had to stop operating or had to be separated from the public organs, irrespective of the authority that had approved their operation.

The Regulations also prohibited relatives and close friends of public servants from running enterprises and from using the influence of the public officials to seek illicit profits from such enterprises. Those found to have violated the Regulations would be punished and their illicit gains would be confiscated.

The Central Committee of the Communist Party and the State Council jointly published on 3 October 1988 the Decision on Clearing Off and Reorganizing Companies. It forbids the use of public administrative fees, institution fees, exclusively allocated funds, extra-budgetary funds, and bank loans by public organs to run companies. The companies already being run in this way must be separated from the public organs within a prescribed period, with respect to the companies' finances as well as their goods and materials. The capital invested in them by the public organs must be managed as state assets by the financial departments at the corresponding level. No public organs shall seek capital or contributions in kind from the companies for any purpose.

Since then the Party and the Government have published other decisions and regulations intensifying the control of the enterprises and businesses run by the Party and the government organs. The most significant measure taken in this respect had to do with the running of enterprises and businesses by the armed forces, the armed police, and judicial organs—a practice that is liable to corruption and destructive to the socialist economic order. The Central Committee of the Communist Party decided in July 1998 that the armed forces, the armed police, and the judicial organs could no longer run enterprises and businesses. By the end of that year, all such organs had separated themselves from the enterprises they had been running.

On 27 March 1997, the Central Committee of the Communist Party published Several Rules Concerning the Leading Officials of CPC on Clean and Honest Government (Trial). The Rules stipulate that leading officials of the Party should strictly prevent the commodity exchange principle from encroaching on the political life of the Party and the political activities of state organs. Public officials may not engage in profit-gaining activities. The following activities are not permitted to them: personal commercial trade, enterprise management, concurrent appointment as part-time employees in economic entities, agency activities with pay, buying and selling of shares, and registration of a company abroad or investment in the company as stockholders.

The Rules also require Party officials to be law-abiding in matters involving their relatives and close friends. They are forbidden to take advantage of their power and influence to seek profit for their relatives, close friends, and subordinates. They are not permitted to provide convenience and favorable conditions for their relatives and close friends to run enterprises and businesses.

To further solve the problem of conflict of interest among relatives and close friends of leading officials, the Rules also expressly prohibit these from running enterprises or taking positions in wholly foreign-owned enterprises within the jurisdiction of the officials.

To emphasize the authority of the Rules, their implementation has been made an important criterion for the assessment of leading officials and their prospects for reward and advancement. Party officials who violate the Rules must accept criticism, re-education, and organizational or disciplinary punishment according to the relevant regulations. The Rules also apply to Party officials working in the organs of the Party, the People's Congress, administration, political consultation, justice organs, and the procurator's office at county (division) level and above; in people's organizations and institutions at county (division) level and above; at the upper-middle level of large and extremely large state-owned enterprises, and medium-sized state-owned enterprises, as representatives of the State or appointed by company investors, and elected and approved by competent authority; or in the Communist Party Committee of Enterprises.

The Fourth Plenary Session of the Commission for Discipline Inspection of the Central Committee of the Communist Party, held in 2000, put forward the requirement that the immediate family of leading officials at the provincial (ministerial) or prefecture (bureau) level may not run enterprises within the officials' administrative jurisdiction that clash with the public interest. To put this requirement into practice, the Commission for Discipline Inspection of the Central Committee of the Communist Party published and distributed on 8 February 2001 the Five Rules on the Running of Enterprises and Businesses by the Spouses, Sons and Daughters of the Chief Leading Officials of the Party Committee and the Government at Provisional and Prefecture Level (Trial). These Rules stipulate the following: the immediate family of chief leading officials of the Party and the Government at provincial (ministerial) and prefecture (bureau) levels working in the area under the administrative jurisdiction of the officials are not permitted to engage in housing estate development or real estate agency, evaluation and consulting activities, advertising agency, or publishing; to set up law firms or be appointed as attorneys or as litigation agents within the area under the administrative jurisdiction of the officials; to operate for

profit such entertainment businesses as singing halls, dance halls, and nightclubs, bath and massage businesses, and any other business activities that may clash with the public interest. If they are already engaged in any of the above-mentioned activities, they should stop those activities or the official should resign from government or accept organizational treatment.

It can be seen from the above account that China's decisions, rules, and regulations intended to govern and prevent conflict of interest have become more and more specific, and their scope has widened to cover not only public organs and public servants but also relatives and close friends.

What is worth noting is that the Communist Party and the central Government, in accordance with the changed situation of the country and the spirit of pragmatism, have made timely amendments and adjustments in the relevant decisions and rules to adapt them to the requirements of social development. The decision on the buying and selling of stock shares by officials is a typical example. In October 1993, the Central Committee of the Communist Party and the State Council jointly made a decision prohibiting leading officials of the Party and the Government at county (division) level and above from buying and selling stock shares. Local authorities and departments in turn forbade their staff from buying and selling shares. In cases when state supervision of the securities market was not adequate, these decisions and rules played an important role in helping the leading officials of the Party and the Government to be clean and honest and self-disciplined, preventing corruption, and ensuring the sound development of the market.

However, with the gradual improvement of the securities market in China, and the promulgation and implementation of the Securities Law in particular, the securities market has been legalized. Investments that staff of the Party and the Government make in the securities market with their own legally earned money are in support of nation building. Therefore, the Central Committee of the Communist Party and the State Council have lifted to some extent the restrictions on the buying and selling of stock shares by Party and government staff. The General Office of the Central Committee of the Communist Party and the General Office of the State Council jointly issued on 3 April 2001 Several Rules on the Practice of the Working Staff of the Party and the Government to Buy and Sell Stock Shares, expressly allowing the practice.

Although the policy has become more lenient, there are still many restrictions to prevent conflict of interest. The Rules point out that the staff of the Party and the Government should follow the relevant laws and regulations in buying and selling stock shares and making security

investments. Among other things, they are strictly forbidden to take advantage of their power and influence (including access to inside information) or take improper means to demand or force the buying and selling of shares of stock.

In line with other rules and regulations on conflict of interest, the Rules prohibit competent authorities in charge of listed companies and other people with inside information on the companies, including their immediate families, from buying or selling the shares of stock of the companies.

As these examples show, China can amend its policies on conflict of interest to suit the country's level of development. With the proper combination of leniency and restriction, pressure can be put on conflicts of interest while avoiding restrictions for their own sake, thus enabling the building of clean and honest government, along with economic and social development.

China has made achievements and acquired experience in governing and preventing conflicts of interest. However, the concept of conflict of interest is fairly new in China, and research on the relevant theory lags far behind. In addition, globalization is gradually intensifying, causing conflicts of interest to extend internationally. Under such circumstances, China will, on the one hand, continue to curb conflicts of interest according to the situation in China and, on the other hand, use foreign experience and the support and assistance of the international community. It is absolutely necessary to strengthen communication and exchange of information with regard to this issue. At the same time, China's success in governing and preventing conflicts of interest is its contribution to international efforts to build clean and honest government.