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**ROYAL GOVERNMENT OF BHUTAN
ANTI-CORRUPTION COMMISSION**

‘NATION’S CONSCIENCE’

“LEAD BY EXAMPLE”

“If you care, you will dare”



11 August 2017

FOREWORD

The fundamental principle of anti-corruption is to promote transparency and accountability in governance systems. Conflict of Interest Management is one of the important tools to promote these principles. It is a genesis of corruption and matter of public trust and confidence in the integrity of institutions. It has to be understood well by all, particularly public officials with decision making powers and control over resources. Abuse of political or administrative power for self-interests, whether for individual, group or party, damages public and private sector organizations, general public and society as a whole.

Public discourse on Conflict of Interest in Bhutan is a recent development. Though Conflict of Interest has been an integral part of ethical and behavioural codes of public servants, it has been seldom discussed and far less understood. Practical inconveniences of avoiding it in a small society like ours cannot be dismissed. Moreover, with development of democracy, Conflict of Interest risks will become more pronounced. Risks of abusing Conflict of Interest situation to evade difficult assignments also cannot be overlooked. For all these reasons and many more, Conflict of Interest in decision making is becoming a growing public concern and it has to be discussed and managed professionally.

Management of Conflict of Interest is one among numerous anti-corruption tools such as Corruption Risk Management, Integrity Diagnosis and Asset Declaration adopted by the Anti-Corruption Commission. Further, the scope of Asset Declaration Rules 2017 has been widened, requiring covered persons to declare their interests including secondary employment and post-employment plans, to enable agencies to identify and prevent potential Conflict of Interest.

This is a model guideline to help agencies develop agency-specific Conflict of Interest Management Policies. It is expected to strengthen the practice of managing Conflict of Interest by instituting robust preventive and management mechanisms. The guideline has been developed in line with the existing Conflict of Interest Management mechanisms with the assistance of Mr. Richard Messick, an independent consultant with expertise on anti-corruption policies and programs and financial support of the Swiss Agency for Development and Cooperation. Two rounds of consultations on the guideline were carried out in January 2015 and June 2017.

Tashi Delek!

(Kinley Yangzom)
Chairperson

FIGHTING CORRUPTION IS A COLLECTIVE RESPONSIBILITY

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Contents

- Foreword i
- Introduction 1
- Section 1: Understanding Conflicts of Interest 3
 - 1.1: Some Ethical Expectations and Statutory Rules 3
 - 1.2: What is Conflict of Interest? 5
 - 1.3: Personal or Private Interest 5
 - 1.4: Financial and Non-Financial Interest 6
 - 1.5: Determining when a conflict is present 7
- Section 2: Handling Conflicts of Interest- Option for Management 10
 - 2.1: Disclosure or Declaration of Conflicts of Interest 10
 - 2.2: Handling the Declarations-Managing the Declared
Information 11
- Section 3: Developing Conflicts of Interest Policy-A Model Process16
- Section 4: Implementing Conflicts of Interest Policy 20
 - 4.1: Leadership Commitment 20
 - 4.2: Communicating the Policy/ies 20
 - 4.3: Training 20

Section 5: Monitoring and Compliance 21

Section 6. Some examples of Conflicts of Interest situations in
Legislature, Judiciary and other vulnerable Sectors 24

Annexure I: Sample Form for Declaration of Conflicts of Interest 27

Glossary29

Reference 31

Introduction

No individual enters public service as a blank slate. Every person who works in the public office comes with family, friends, hobbies, and various affiliations and associations. A public official may own a business or hold property that can be affected by government action. They may belong to clubs, professional associations, and other organizations that take positions on public issues. Any of these relationships or interests could make it difficult for the public official to discharge his or her responsibilities as a public official impartially, for the official may be put in a situation where his or her private interests or loyalties are in conflict with his or her duty to advance public interest.

Since serving the public interest is fundamental to every public institution and government at large, impartiality and transparency in public administration is crucial to uphold public trust and confidence in the integrity of public officials and institutions. In a small society like ours, Conflicts of Interest in our working lives are natural and unavoidable. The mere existence of Conflicts of Interest does not necessarily mean that someone has done something wrong but it just needs to be managed carefully. Unmanaged Conflicts of Interest may lead to corruption or other official misconduct. It is not enough that public officials are honest and fair, they must also be clearly seen to be so. Inadequate management and undisclosed interest can also create risk of allegations or other adverse consequences such as litigation. However, Conflicts of Interest cannot be easily managed by simple set of Rules because they can arise in any sort of situations at any time. The public organizations and officials must exercise prudent judgment on a case by case basis.

This guideline is meant to help public officials and organizations manage Conflicts of Interest prudently by developing their own policy/ies on managing Conflicts of Interest. It describes what Conflict of Interest is, when a public official could find himself or herself in a situation where there is a conflict, explains when the conflict is severe enough to warrant

taking action, its management options and processes for developing Conflicts of Interest policy/ies.

The guideline applies to anyone who is a member, whether elected or appointed, employee of a public organization, civil servant and any public institution who uses public resources. It will be also useful for those who work for or with public organizations.

***Note:** This guideline supplements but does not replace any specific requirements or policy/ies that may already exist in an organization.*

Section 1: Understanding Conflicts of Interest

1.1. Some Ethical Expectations and Statutory Rules

Public service ought to be conducted with a spirit of:

- Integrity;
- Honesty;
- Openness;
- Independence;
- Impartiality;
- Good faith;
- Transparency; and
- Accountability.

These are some of the key principles in conducting public business outlined in various Codes of Conduct for public agencies.

1.1.1. Statutory Rules

- Anti-Corruption Act of Bhutan 2011: “where a public servant or his or her relative or associate has a private or personal interest in a decision to be taken by a public agency, that public servant shall not vote or take part in a proceeding or process of the public agency relating to such decision” (Section 63).
- Bhutan Civil Service Rules and Regulations 2012: “A civil servant shall declare and avoid Conflicts of Interest in the process of official decision-making and while discharging all other official responsibilities” (Section 3.2.11) and “A civil servant shall declare the business/trade of his or her spouse/dependants to the agency where the civil servant is employed. The agency shall maintain a list of spouses and dependants of their employees engaged in formal or non-formal business” (Section 18.4.1).

- Civil and Criminal Procedure Code of Bhutan 2001: “A case shall not be assigned to a Drangpon (Judge) who may have or be reasonably construed to have a Conflict of Interest in matter at hand” (Section 73).
- Judicial Service Act of Bhutan 2007: “A Drangpon shall disqualify himself from participating in any proceedings in which he is unable to decide the matter impartially or in which he has a Conflict of Interest. Provided that disqualification of a Drangpon shall not be required if no other Court can deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice” (Section 111);
- “A Drangpon shall not accept any gifts, presents or benefits” (Section 117); and
- “A Drangpon shall not engage in financial and business transactions in which he may have a Conflict of Interest” (Section 118).
- National Assembly Act of the Kingdom of Bhutan 2008: “A member must avoid putting himself in situations where his or her personal interest may influence the carrying out of his or her duties” (Section 288); and
- “Members whose personal interests are directly affected by any matter being considered shall indicate and declare their personal interest when making a statement in the House or in the Committees” (Section 289).
- National Council Act of the Kingdom of Bhutan 2008: “A member shall refrain from casting his vote on any issue where he has a Conflict of Interest” (Section 169).

1.1.2. Some of the key Statutory provisions can also be found in:

- Asset Declaration Rules 2017;
- Gift Rules 2017; and
- Corporate Governance Code of Druk Holding & Investments Limited.

1.2. What is Conflict of Interest?

Conflicts of Interest occur when the public official's personal interest compete with the interest of the organization or company.

Bhutan Civil Service Rules and Regulations (BCSR) 2012 define Conflicts of Interest as “*any conflict between the official duties and the private interest of a civil servant, including not only his vested interest but also those of his family*”.

OECD: Conflicts of Interest involve a conflict between public duty and private interest of the public official, in which the public official has private interest which could improperly influence the performance of public duties and responsibilities.

1.3. Personal or Private Interest: Those interests that can bring benefits or disadvantages to the public official as an individual, or to others whom the public official may wish to benefit or disadvantage. Private Interests are not limited to pecuniary interest or to interest that can bring direct personal gain or help avoid personal loss. They also include social and professional activities and other interests.

Personal or Private Interest could be for those members of his or her family or those with whom he or she maintains living arrangements or relationship approximating a family relationship or close friends. As per the ACT, there are four categories or individuals whose interests

are imputed to the official viz. *i) a spouse, concubine, conjugal partner or paramour ii) Brother or Sister, iii) Brother or Sister of the spouse, concubine, conjugal partner or paramour and iv) any lineal ascendant or descendent of that person.* BCSR 2012 includes two more to this list: *i) close friends, and ii) enemies.* For ease of reference, these six categories are termed as ‘Related Person(s)’ in this guideline. Personal Interest could be both financial and non-financial.

1.4. Financial and Non-Financial Interest

Financial or Pecuniary Interest occur whenever a public official personally participates in any matter in which, to his or her knowledge, to him or her or any Related Person(s) has a financial gain or loss. Non-Financial or Non-Pecuniary Interest do not have financial or other material component. They may arise from personal or family relationship, membership in a group or association and involvement in sporting, social or cultural activities that could make it difficult for the public official to act impartially. Financial Interest is easier to detect whereas Non-Financial Interest can be difficult to discern and it can be even more difficult to determine their effect on an official’s judgment.

Examples of Financial and Non-Financial Interest

Financial Interest	Non-Financial Interest
You own shares in one of the financial institutions which is being regulated by your organization.	One of your regular archery buddies has submitted a tender to your organization and you keep an eye on its progress.
You receive a gift from a firm who seeks or has a contract with your organization.	You are the Chairperson of one of the local religious organizations which seeks donation from your organization.

1.5. Determining when a conflict is present

To determine whether Conflicts of Interest is present or would occur if an employee is to participate in a decision or other matter, one must determine whether the employee or a Related Person(s) has a financial or non-financial interest that would be affected by his or her participation.

1.5.1. Financial or Pecuniary Interest

Some of the questions to ask to determine if there is Financial Interest(s) are:

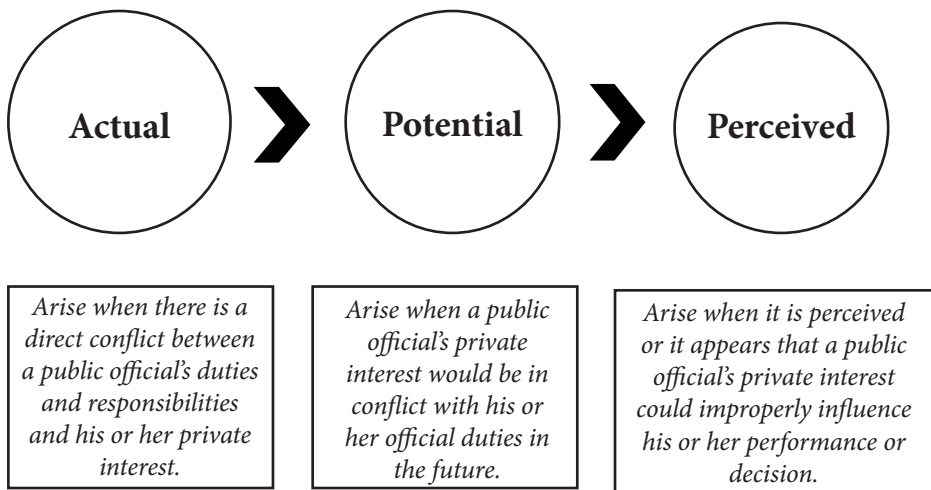
- Does the employee own all or part of a business that could be affected by an action he or she would take in carrying out his or her responsibilities?
- Would the employee's actions affect a business owned in whole or part by a spouse, child, in-law, brother, sister or any other Related Person(s)?
- Are any of the employee's relatives employed by a company that would be affected by an action the employee would take or participate in?
- Would the employee's decision in any forthcoming matter bring impact to the company/business in which a Related Person(s) has an interest?
- Are there any other financial ties between the employee or a Related Person(s) and the individual or firm that is the subject of the action?

Note: *While in each of the situations above, there would be a Conflict of Interest if the employee sits in the panel or Committee, continue with the audit and takes action, whether in each case doing so would be illegal will depend upon other factors. Did the employee disclose the situation to his or her employer? Did the employer subsequently give permission for the employee to participate in the panel or Committee, continued the audit, or acted upon it.*

1.5.2. Non-Financial Interest

Whether an employee might be influenced by Non-Financial Interest will depend upon the employee's values and dispositions, factors that cannot be observed. The best that can be done is to focus and determine the employee's official role and the private relationships and interests of the employee and the other person(s) concerned. The test is whether a reasonable, disinterested observer knowing these facts would think the relationship or interest could color the person's judgment.

1.5.3. Conflicts of Interest can be Actual, Potential and Perceived



Source: *Managing Conflicts of Interest in the public Sector*, OECD.

1.5.4. How the above Conflicts of Interest situations can arise

The following scenarios demonstrate how each of the above three different kinds of Conflicts of Interest may come into play while performing public duties.

Scenario	Type of Conflicts of Interest	Why this is so?
<p>You are a public official who is a Member of the Tender Committee who regularly evaluates the bids submitted by the contractors in the locality.</p> <p style="text-align: center;">▼</p>	<p>No conflict</p>	<p>This is part of your assigned official duties, but you have no relevant private interest that may impact on carrying out your duties.</p>
<p>Subsequently, your spouse started to run a construction firm/ company.</p> <p style="text-align: center;">▼</p>	<p>Potential conflict</p>	<p>Your private interest (spouse's business) is not currently relevant to your official duties but it could be in the future if your spouse submits bid to your agency.</p>
<p>Your spouse submits bid to your agency for construction of a school in the locality.</p> <p style="text-align: center;">▼</p>	<p>Perceived conflict</p>	<p>Although you do not evaluate the bid yourself as a Tender Committee Member, some may consider/perceive that your private interest is relevant to and may have influenced your assessment.</p>
<p>You evaluate the bid submitted by your spouse.</p>	<p>Actual conflict</p>	<p>As a Committee Member, your private interest is relevant to your assigned official duties and could improperly influence your assessment as your spouse is a related individual who stands to benefit or lose by your assessment.</p>

Section 2: Handling Conflicts of Interest- Option for Management

2.1. Disclosure or Declaration of Conflicts of Interest

Disclosure is more accurately described as a tool for determining whether to i) Recuse, ii) Divest or iii) Waive the conflict. Currently, declaration is done in the following two ways:

2.1.1. Annual Declaration

As required by the Asset Declaration Rules 2017, public officials are required to declare their financial interests annually to the respective agency and Anti-Corruption Commission as specified in the Rules. The declaration record should be reviewed and updated in a timely manner, to help monitor situations that could give rise to conflict and also to identify Conflicts of Interest at an early stage.

2.1.2. Transaction or Ad hoc Disclosure

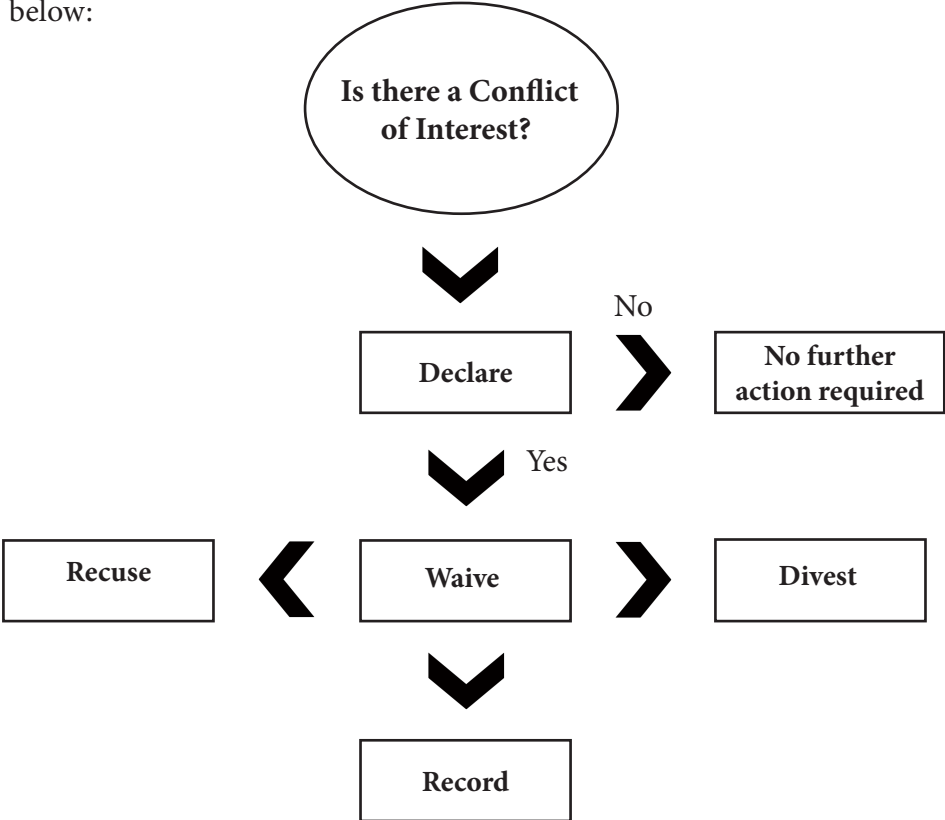
Public servants are obliged to declare Conflicts of Interest and refrain from taking public decisions if he or she has Conflicts of Interest. BCSR 2012 requires civil servants to complete a form (Annexure 3/1) before sitting on a panel or participating in any other public decisions. The form provides that employees either certify that they are aware of no Conflicts of Interest or provide their list of relationships with Related Person(s). It can be further broadened by adding two questions to it: “Is there any reason (*based on personal relationships, membership in any association, affiliation with any organization, or any other personal, professional, or economic ties*) why the official thinks that he or she would be unable to take impartial decision on the matter? Or why a reasonable person would in good faith think that the official would not be able to decide impartially. The information that needs to be declared should be clearly stated in the Declaration Form.

Note: To avoid being charged with ethical impropriety, a public official may decline to participate in some sensitive and controversial decisions. However, one should not take this stand to simply avoid performing one's duties. The Management or Committee concerned depending on the circumstances and nature of conflict should decide whether to recuse the official from sitting in a panel.

2.2. Handling the Declarations-Managing the Declared Information

Once the conflict has been identified and declared, the organization or Committee concerned may need to take the necessary steps to prevent or remove any possibility or perception of official roles and responsibilities being used for private benefits. Conflicts of Interest can be Waived, Recused or Relinquished based on the nature of conflict, complexity of the situation and severity of the case.

A simple flow chart for handling Conflicts of Interest declaration is given below:



2.2.1. Waiving of Conflict of Interest

The ACT (Section 63) states “where a public servant or his or her relative or associate has a private or personal interest in a decision to be taken by a public agency, that public servant shall not vote or take part in a proceeding or process of the public agency related to such decision.” In other words, if the employee has any interest whatsoever that might conflict with the public interest, no matter how insignificant, he or she is disqualified from participating in decisions that might affect that interest. By contrast, BCSR 2012 (Section 3.2.11.2) states that the employees are only required to withdraw from participating in a decision if he or she “cannot respect the merit of the case because of his or her own personal interest or relationship with stakeholders” thus providing greater flexibility for it permits the Conflicts of Interest to be waived. That is, an employee with an interest can participate in a decision or other matter where he or she has an interest if a determination is made that the interest will not affect the employee’s judgment.

However, the Management or Committee must determine that despite the conflict, the official “can respect the merits of the case.” In doing so, the following factors, in particular, should be weighed:

- Nature of the relationship between the individual or firm that could be affected by government action and the public official with the conflict;
- The effect that the decision or other action would have upon the financial interest of the person or firm involved;
- Nature and importance of the public official’s role in the matter, including the extent to which the official is called upon to exercise discretion in the matter;
- Sensitivity of the matter;
- The difficulty of reassigning the matter to another official; and
- Adjustments that may be made in the official’s duties that would reduce or eliminate the likelihood that a reasonable person would question the official’s impartiality.

Note: In the event the Manager or Committee decides to waive a conflict, the decision along with a brief statement of what the conflict was and why it was waived should be recorded in writing and maintained as part of the agency's official records.

2.2.2. Recusal and Divestiture

Another way of managing Conflicts of Interest is through Recusal and Divestiture. Recusal means requiring the employee to withdraw from participating in a decision. Divestiture means that the official sells or transfers the conflicting interest.

Recusal is appropriate if the conflict is not likely to arise on a regular basis

Example: Buying a new computer system, a one-time purchase that is not going to be repeated in the foreseeable future.

Conflict can be avoided by recusing the official or Related Person(s) holding shares in a computer company from sitting in the Tender Committee.

Divestiture is appropriate if the conflict is frequent/regular

Example: An employee who works in Education Department and also owns a consulting firm on professional development or providing services related to education.

The employee is likely to be involved in many decisions that could affect his or her firm. If he or she were to recuse from the matter in every instance, it would increase the workload of other employees. Under these circumstances, the preferred option is to transfer the employee. Alternatively, require the employee to sell the interest in the business.

2.3. Some Options for Managing Conflicts of Interest

Management Strategy	When most suitable	When least suitable
<p>Register</p> <p>Where details of existence of possible or potential Conflicts of Interest are formally registered or declared.</p>	<p>For very low-risk Conflicts of Interest and potential Conflicts of Interest.</p> <p>Where the act of transparency through recording the Conflicts of Interest is sufficient.</p>	<p>The Conflicts of Interest is more significant or of high risk.</p> <p>The potential or perceived effects of Conflicts of Interest on the proper performance of the public employee's duties require more proactive management.</p>
<p>Restrict</p> <p>Where the restrictions are placed on the public employee's involvement in the matter</p>	<p>The public employee can be effectively separated from parts of the activity or process.</p> <p>The Conflicts of Interest is not likely to arise frequently.</p>	<p>The conflict is likely to arise more frequently.</p> <p>The public employee is constantly unable to perform a number of his or her regular duties because of Conflicts of Interest issues.</p>
<p>Recruit</p> <p>Where a disinterested third party is used to oversee part or all of the process that deals with the matter.</p>	<p>It is not feasible or desirable for the public employee to remove themselves from the decision making process.</p> <p>In small or isolated communities where the particular expertise of the public employee is necessary and genuinely not easily replaced.</p>	<p>The conflict is serious and ongoing rendering ad hoc recruitment of others unworkable.</p> <p>Recruitment of a third party is not appropriate for the proper handling of the matter.</p> <p>A suitable third party is unable to be sourced.</p>

<p>Remove/Recuse</p> <p>Where a public employee chooses to be removed from the matter.</p>	<p>For ongoing serious Conflicts of Interest where ad hoc restriction or recruitment of others is not appropriate.</p>	<p>The Conflicts of Interest and its perceived or potential effects are of low risk or low significance.</p> <p>The public employee is prepared to relinquish the relevant private interest rather than radically change his or her work responsibilities or environment.</p>
<p>Relinquish/ Divestiture</p> <p>Where the public employee relinquishes the private interest that is creating the conflict.</p>	<p>The public employee's commitment to the public duty outweighs his or her attachment to his or her private interest.</p>	<p>The public employee is unable or unwilling, for various reasons, to relinquish the relevant private interest.</p>
<p>Resign</p> <p>Where the public employee resigns from the position in the agency.</p>	<p>No other options are workable.</p> <p>The public employee cannot or will not relinquish his or her conflicting private interest and changes to his or her work responsibilities or environment are not feasible.</p> <p>The public employee prefers this course as a matter of personal principle.</p>	<p>The Conflicts of Interest and its potential or perceived effects are of low risk or less significance. Other options exist that are workable for the public employee and the agency.</p>

Source: *Toolkit for Managing Conflicts of Interest in the Public Sector: ICAC, New South Wales.*

Section 3: Developing Conflicts of Interest Policy-A Model Process

3.1. Managing Conflicts of Interest can never be as simple as creating and enforcing a set of Rules. Nevertheless, robust Policy/ies and procedures within the organization is a useful starting point. Following are some of the model processes for developing Conflicts of Interest policy/ies:

Step 1: ➤ **Identify Conflicts of Interest Risks**

Prior to the development of Conflicts of Interest policy/ies and procedures, an organization must consider the nature of its own organizational structure, functions and activities and any applicable legal requirements. It should take into account what its operations are, what field it operates in and what sort of problems or risks might typically arise. Example: Is the organization's function more to do with:

- Contracting;
- Recruiting;
- Allocating budget;
- Public consultation; or
- Quasi-judicial or regulatory decision-making.

Step 2: ➤ **Check regulatory framework and obligations**

Review whether there is any formal obligation imposed on the organization by legislations. An organization must also consider other relevant policies example: Code of Conduct, Gifts and benefits, Asset Declaration, secondary employment policy etc.

Step 3: ➤ **Study Conflicts of Interest policies of other organizations**

Liaise with other organizations with similar functions that have already established Conflicts of Interest policy/ies.

***Step 4:* ➤ Define clear aims and objectives of the Policy/ies**

The objectives of the policy/ies must be precise and clear.

***Step 5:* ➤ Set clear Rules and procedures on Conflicts of Interest Declaration**

Policy/ies must clearly specify what, when and how public officials are obliged to file their interest statement, consequences and procedures on handling the breach of Conflicts of Interest policy/ies. Some Conflicts of Interest situations will be foreseeable and the solutions will be straight forward. For such situations, clear Rules could be framed in a policy. Example: Depending on the nature of the organization's functions, organization may prohibit its members and officials from:

- Being involved in a decision to appoint or employ a relative;
- Hearing a case where an official has direct Conflicts of Interest;
- Conducting business on behalf of the organization with a relative's company;
- Owning shares in a company that the organization deals with;
- Accepting gifts in connection with their official roles; and
- Influencing or participating in a decision to award contract where an official has connection or personal relationship with the bidder.

***Step 6:* ➤ Identify who the policy should apply to**

Some parts of the policy/ies may be relevant only to Board Members or for certain official and may not apply to all staff. It may also be prudent to require certain types of stakeholders or consultants to comply with the policy/ies, depending on the nature of their roles and organization's functions.

Step 7: ➤ Some basic elements required in Conflicts of Interest Declaration Form are:

- Details of the person making the declaration;
- Description of the interest declared;
- Brief legal statement to qualify the form as a Law binding document;
- Record of the actions or decisions taken on the interest declared; and
- Signature of the person making the declaration and the Chairperson of the Committee concerned.

Note that before the declaration, the head of agency should clearly brief the declarants on the objectives of the declaration, legal obligations and consequences for non-compliance.

Step 8: ➤ Identify an officer or Monitoring Committee

The organization should identify an officer or a Committee to implement and monitor its compliance with clear roles and responsibilities. Suggested roles and responsibilities for an officer or Committee concerned are highlighted below.

3.2. Suggested Roles and Responsibilities for an officer or Committee concerned

- Liaise on Conflicts of Interest and other integrity or anti-corruption issues with the Anti-Corruption Commission or the Royal Civil Service Commission (civil service) or appropriate authorities as the case may be;
- Review interest disclosure reports of officials in an organization;
- Initiate and institute ethics education and training programs;
- Advise organization's officials and staff on Conflicts of Interest and other ethical issues;
- Institute a system of collecting and filing, as well as storage and retrieval of interest disclosure reports;
- Ensure effective action is undertaken to remedy, like:
 - (i) *Violations or potential violations, or appearances thereof, of Conflicts of Interest Rules and other ethical standards of conduct;*
 - (ii) *The failure to file a disclosure report or filing an incomplete report; and*
 - (iii) *Potential or actual Conflicts of Interest, or appearances thereof, declared in the Asset Declaration System.*
- Maintain records showing when a Conflict of Interest has been waived and the reasons for the waiver; and
- Submit report on Conflicts of Interest management to relevant regulatory agency when deemed necessary.

Section 4: Implementing Conflicts of Interest policy

4.1. Leadership Commitment



The Managers and senior public officials must arrange their private interest in a manner that preserves public confidence in their integrity and integrity of their organization. Set examples to the rest of the employee by declaring their private interest and provide appropriate assistance and monitor the implementation of Conflicts of Interest policy/ies in their organization.



4.2. Communicating the Policy/ies



Recommended measures for effective implementation and management of Conflicts of Interest policy/ies:

- Disseminate Conflicts of Interest policy/ies to all officials or members including new employees;
- Ensure online availability of Conflicts of Interest policy/ies and Declaration Forms;
- Provide support and advice when members or officials have doubt/s on Conflicts of Interest and other ethical dilemmas; and
- Communicate organization's policies on managing Conflicts of Interest to the relevant stakeholders.



4.3. Training



- Provide training on Conflicts of Interest management and other ethics and integrity component for Managers and Committee concerned to ensure effective implementation of the policy/ies; and
- Provide timely refresher course on Conflicts of Interest management for public officials, particularly those in vulnerable positions.

Section 5: Monitoring and Compliance

Monitor and ensure compliance to Conflicts of Interest policy/ies, Rules and procedures. Public officials must be held accountable for non-compliance such as the following:

- Accepting or holding prohibited interests such as accepting gifts and business;
- Not declaring private interest and Conflicts of Interest situations; and
- Not reporting Conflicts of Interest of co-workers etc.

Once the policies are in place, it is necessary to set up clear and consistent procedures to monitor the breaches of the policy, investigate whether misconduct has occurred, and ensure appropriate penalty is imposed to the offenders as prescribed in the relevant Rules and Law.

5.1. Reporting Conflicts of Interest

If the public official responsible or the third party observes or learns of any information on the official's Conflicts of Interest, he or she shall bring the matter to the official's attention, or report to the supervisor or if necessary, lodge a formal complaint in accordance with the agency's internal reporting mechanism.

5.2. Breach of Conflicts of Interest Policy

Breaches of the Rules/policies governing Conflicts of Interest can happen in several ways. Firstly, a public official may act when a conflict is present and a waiver has not been granted. Secondly, a public official may fail to disclose conflict on a Disclosure Form he or she is required to file hoping he or she will be able to act fairly upon the conflict and thirdly, a public official may fail to file a Disclosure Form.

The organization may impose penalty/ies on the official's failure to comply with the organization's Conflicts of Interest policy/ies as deemed appropriate. Suggested sanctions for each kind of the breach are described below:

5.2.1. Acting without revealing Conflict of Interest when conflict is present

Acting in the face of undisclosed interest is the most serious breach of Conflict of Interest. Public officials who acts without revealing when conflicts are present have betrayed the public trust and their actions can be considered a crime.

<p>a. Penalties for acting where advantage has been received:</p> <p>Such cases shall be referred to the ACC, which shall be dealt in accordance with the Anti-corruption Act of Bhutan 2011.</p>	<p>b. Penalties for acting when no advantage has been received:</p> <p>The consequences of acting where no advantage has been received are generally less harmful. The harm is almost always reputational or questioning the integrity and fairness of the agency. Thus, the penalties are much less severe. Typical sanctions can be:</p> <ul style="list-style-type: none">• Reprimand; or• Disciplinary action as per the relevant Rules and copy of action taken report must be maintained in the official's personal file.
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5.2.2. Failure to file Conflicts of Interest Declaration

The guideline has identified two types of interest declarations [Refer Section 2]. Failure to file either of this or other interest declaration required by law if any, compromises the organization's ability to monitor Conflicts of Interest. The organization may impose a fine for late filing and a minor penalty for failure to file the declaration if there is no element of official misconduct.

The penalty for failing to file Conflicts of Interest declaration should be as prescribed in the relevant Rules and Law.

Note that the appropriateness of the penalty/ies will depend upon the circumstances. Was the public official trained on management of Conflicts of Interest? How deeply involved was he or she in the decision? Example, if the public official was the sole person making the decision, the violation would be more serious than if a public official was one of several on a Committee making the decision.

Section 6: Some examples of Conflicts of Interest situations in Legislature, Judiciary and other vulnerable Sectors

6.1. Legislature

- A Member or official who owns land, sitting on a panel to discuss on the construction of a new airport in that particular locality.
- A Member buying a plot upon knowing the government's policy on town planning in that particular area.
- A Member, who owns a rental building discusses on the Tenancy Act.
- A Member discusses on tax exemption for import of computer and IT accessories in Bhutan whose associates or relative owns a computer shop.
- A Member voting for relaxation of Mining Rules, whose relative owns a mining company.
- A Member accepts a fee from a foreign agency to help it win permission to open a business in Bhutan and promises to employ people of his/her constituency.
- A Member lobbying for relaxation of business tariff to fulfil his or her political pledges.

6.2. Judiciary

- A Judge is assigned a case involving a dispute over a contract where one of the parties is his/her brother-in-law.
- A Judge is hearing a case involving a financial institution in which he or she holds shares.
- A Judge has a case involving a foreign company before him or her. The company offers his or her son a job.
- A Judge decides a case between two individuals he or she does not know. Later, the winning party sends a gift and the Judge accepts it.

6.3. Public Procurement

- A public official sitting as a Tender Committee Member where one of the competing bidders is the official's Related Person(s).
- A public official accepting a gift or hospitality from an individual or firm with which his or her organization has a contractual dealing.
- A public official preparing bid documents using the contract information acquired during the process of carrying out of his or her public duties.
- A public official awarding contract to his/her own firm, relatives or associates.
- A public official lobbying the purchase of materials or services from a firm based on personal relationship.

6.4. Human Resource

- A public official participating in recruitment, hiring, promotion, supervision or evaluation of a person with whom the official has a marital or other personal relationship and fails to disclose the relationship.
- A public official using the organization's resources or information obtained during the process of carrying out his or her public duties for his or her personal gain or unauthorized purpose.
- A public official using intellectual property acquired or developed using organization's resources for personal benefits. Example, using software tools or programs, or specialized equipment developed in the course of his or her employment.
- A public official accepting a gift or hospitality from an individual or firm with which his or her organization has official dealings.
- A public official lobbying where one of the competing bidders is the official's immediate family member or Related Person(s).

6.5. Corporate/Private Entities

- Mr. X is Chairman of the Board of Directors of Private Associations. In a Board Meeting, the Directors are considering whether to approve a recommendation by its staff to enter into a contract with company A. The son of Mr. X is the sole shareholder of company A.
- Ms. Y is overseeing the construction of a new building for the corporate agency she works for. The contractor constructing the building offers her a job after the building is completed.
- The proprietor of a business firm sponsor a family dinner for Inspector who inspects the firm's accounting record.

Annexure I: Sample Form for Declaration of Conflicts of Interest

Part A-Declaration of Conflicts of Interest

I,[*name*], bearing CID No.....,[*Position/Title*] of.....[*Agency*], hereby declare that:

I do not have any pecuniary interest or other personal interest, (actual or potential) in any matter that raises or may raise a conflict with my duties as a Member of.....[*Committee/Board*] of.....[*Agency*]. I shall notify the Management or Committee concerned immediately in the event such interest arises in the course of discharging my duty as a.....[*Committee/Board*] Member.

OR

I have pecuniary interest or other personal interest (actual or potential) in certain matter that may raise or raises a conflict with my duty as a Member of[*Committee/Board*] of[*Agency*].

If (yes)

i. Briefly describe the nature of interest:

.....
.....

ii. Do you think you would be able to take decisions impartially despite the Conflicts of Interest?

Yes No

I confirm that the above information is true to the best of my knowledge. In the event the above declaration is found to be incorrect, I shall be liable for administrative/legal action as per the Anti-Corruption Act of Bhutan 2011 and other relevant Rules and Laws of the land.

Signature of the Employee: _____

Date: _____

Part B-Record of Resolution

With respect to the above declaration, the Chairperson of the Committee concerned has passed the following resolution:

The declarant shall:

- Refrain from getting involved or participate in performing his or her duty, as described in Part A, which may raise or raises conflicts.
- Continue to participate in performing his or her duty as described in Part A, provided that there is no change in the information declared above.
- Others (Please specify).

Signature of the Chairperson: _____

Date: _____

Glossary

1. **ACT:** Anti-Corruption Act of Bhutan 2011.
2. **Code of Conduct:** A series of statements informing employees how they are expected or required to act.
3. **Family:** Members consisting of spouse and children.
4. **Managing Conflicts of Interest:** A process where Conflicts of Interest is managed to ensure probity, transparency and the public interest.
5. **Disclosing Conflicts of Interest:** Transparent act of formally making known to others of interests which exist that may affect carrying out the official duties. Disclosure involves the public official concerned registering details of interest, reporting Conflicts of Interest to the Manager and declaring his or her Conflicts of Interest in a situation where he or she is expected to participate in a decision or about the matter.
6. **Interest:** Private Interest of a public servant.
7. **Official or Public Official:** A person who is a member, an officer, an employee of a public agency, whether appointed or elected, whether permanent or temporary, whether paid or unpaid and includes civil servants within the meaning of the Civil Service Act, receiving salary, allowances, benefits or emoluments from public funds.
8. **Organization/Agency:** As prescribed in the ACT.
9. **Public Interest:** Carrying out official duties for benefit of the public served by government, in a fair and unbiased way, and making decisions that are not affected by self-interest, private affiliations or the likelihood of personal gain or loss.

10. **Personal affiliations:** Includes personal, professional or business interest of others such as family members and friends or even rivals and enemies.
11. **Bias:** Prejudicial treatment, favouritism or partiality.
12. **Integrity:** Adhering to highest ethical standards in decision-making and exercise of entrusted power.
13. **Secondary Employment:** When a public official work for one organization but also does paid part-time or casual work for another organization such as operating a business and providing paid consultancy services to another individual or organization.
14. **Reporting:** The act of reporting or disclosing to an appropriate individual or authority that a Conflict of Interest exists which may interfere with the proper discharge of public duties.

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