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**REPORT ON MANAGING CONFLICTS
OF INTEREST
IN THE PUBLIC SERVICE**

PUBLIC SERVICE COMMISSION - 2006



REPORT ON MANAGING CONFLICTS OF INTEREST IN THE PUBLIC SERVICE

Published in the Republic of South Africa by:

THE PUBLIC SERVICE COMMISSION (PSC)

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National Anti-Corruption Hotline Number: 0800 701 701 (Toll-Free)

Production & Distribution by:

Directorate: Communication and Information Services

Compilation by:

Directorate: Professional Ethics Research & Promotion

ISBN: 0-621-36517-3

RP: 38/ 2006

DATE OF ISSUE: JULY 2006

ACKNOWLEDGEMENTS

The Public Service Commission wishes to acknowledge the contributions of the following agencies for facilitating the research process of this report by providing financial assistance so that officials of the Office of the Public Service Commission could undertake study tours to Germany and Canada to learn international best practices regarding the management of conflicts of interest. Therefore special thanks to the:

- Canadian International Development Agency (CIDA).
- Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ).

The Public Service Commission would also like to thank the officials and organizations that hosted its delegation on the study tours to Germany and Canada, respectively. A list of officials and organizations consulted is at Appendix E.

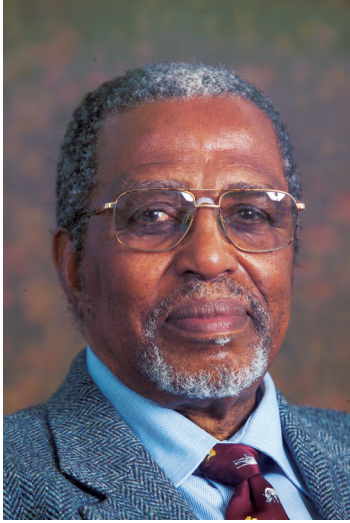
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FOREWORD BY THE CHAIRPERSON



The increase in the interface between the public and private sector interests has given rise to public debate worldwide on conflicts of interest. This debate centers around the fact that the increased interaction between public and private interests potentially creates opportunities for conflicts of interest to occur. In order to minimize such opportunities, mechanisms have to be set in place to manage conflicts of interest so that public officials do not take advantage of their public positions for personal benefit.

The important idea behind developing mechanisms for managing conflicts of interest is to promote the perception of integrity in government by preventing conflicts of interest before they occur. In so doing it is hoped that the citizens' trust in public institutions would be strengthened.

Essentially, public officials have the responsibility to perform their tasks efficiently, effectively and fairly. Public officials' personal situations, inclinations or preferences or those of their family, friends and associates should not influence them when making decisions in a public capacity. On the other hand, it is expected of government to ensure that the private interests and affiliations of public officials do not corrupt official decision making and public administration. It is for this reason that we propose in this report that a framework for the management of conflicts of interest be developed in the South African public service.

I have to agree with the fact that most public servants in South Africa are honest. Strangely though, in anti-corruption strategies little focus is given to the protection of honest public servants. Therefore, there is a need to put in place a system that keeps our honest public servants honest. This is what we hope to achieve with the development and implementation of a framework to manage conflicts of interest.

A handwritten signature in black ink that reads "Sangweni". The signature is stylized with loops and flourishes.

PROFESSOR S.S. SANGWENI
CHAIRPERSON: PUBLIC SERVICE COMMISSION

EXECUTIVE SUMMARY

The development and implementation of a conflict of interest policy and/or system is a new and important initiative in the South African public service. By initiating a conflict of interest system, one does not only seek to promote and implement conflicts of interest standards but essentially, one seeks to promote the perception of integrity in government by preventing conflicts of interest before they occur.

It must be remembered that public officials are also private individuals. There will be occasions when a public official's own private interest may come into conflict with his/her public duty which is to put the public interest first. Where reasonably possible, a public official should avoid conflicts between his/her personal interest and the public interest. However, where conflicts of interest cannot reasonably be avoided, it should be **managed** effectively. And this is what this report is about. It addresses the conceptualization of managing conflicts of interest in the public service.

In this report conflicts of interest is defined as a conflict between the public duties and private interests of a public official, in which the public official has private-capacity interest which could improperly influence the performance of his/her official duties and responsibilities.

With this definition as a starting point the report differentiates between an actual, perceived and a potential conflict of interest. It is expected of a public official to be constantly aware of these types of conflicts of interest and where possible, avoid it because the community has the right to expect that public officials at all levels perform their duties in a fair and unbiased way.

In order to obtain knowledge of how conflicts of interest are managed in practice, the report draws on key aspects based on the experience of countries such as Germany, Canada and Australia. In Germany conflicts of interest is managed by means of separate laws and legal administrative measures that are in place. Canada on the other hand has a conflicts of interest system which is centrally managed by the Canadian Office of the Ethics Commissioner. In Australia Heads of Agencies have the responsibility to manage conflicts of interest within their respective Agencies. Emanating from the understanding of the three countries' approaches issues relevant to the debate on conflicts of interest in South Africa are highlighted. Some of these issues include "cooling off" periods, remunerated work outside of the public service, gifts and the location for the management of conflicts of interest. These are issues that must be taken into account when crafting a framework for the management of conflicts of interest in the South African public service.

It is seen in this report that in order to develop a conflict of interest system one has to take cognizance, not only of the key principles of conflicts of interest, but also of the fact that an effective conflicts of interest system rests upon three pillars. These are firstly, a clear and comprehensive code of conduct, secondly, sensible disclosure and thirdly, effective administration. A Code of Conduct has been implemented in the South African public service in 1997 and the Financial Disclosure Framework in 1999. The Code of Conduct set the basis for addressing conflicts of interest, and the Financial Disclosure Framework seeks to prevent conflicts of interest by requiring of all senior managers to disclose their financial interests. The third phase in addressing conflicts of interest in the public service is to develop a structured approach for the management of conflicts of interest. Therefore, the recommendations of this report are as follows:

- As a first option it is recommended that a stand alone conflicts of interest policy be implemented to manage conflicts of interest. Two options are provided in this regard. The first policy provides comprehensive measures to be adhered to whilst the second adopts a framework approach.
- As a second option it is recommended that the Code of Conduct for public servants, the Financial Disclosure Framework for SMS members and the proposed policy on conflicts of interest (See Appendix A) be amalgamated to form one conflicts of interest system.

- That the PSC develops a structured framework to manage the conflicts of interest of SMS members, clearly outlining its scrutiny procedure and approach to breaches.
- That the human resource capacity of the Ethics component within the PSC be increased in order to thoroughly deal with the management of conflicts of interest. It is envisaged that a Chief Directorate be established for this purpose.
- That the management of conflicts of interest for officials below SMS be performed on a decentralized basis by Heads of Departments and that the PSC oversees and monitors the application of the conflict of interest policy in this regard.
- That thorough consultation should take place before implementing the envisaged conflicts of interest policy.
- That conflicts of interest education should be an on-going process in all government departments.



CHAPTER 1

INTRODUCTION TO THE RESEARCH REPORT

I.1 BACKGROUND

Conflicts of interest have become a matter of concern world wide. Many developing countries are grappling with conflicts of interest especially as they have gone through a process of reform. Any reform or transformation process, such as has been happening in South Africa over the last ten years, makes government systems susceptible to conflicts of interest arising. This is characterized by the increase in the interface between the public and private sector interests, as well as the need to promote the perception of integrity in government. This is especially pronounced since the new South Africa inherited a system which was rooted in a set of discriminatory and undemocratic social relations. It is therefore not surprising that high socio-economic movement, and high job mobility between the private and public sector is detectable in South Africa.

South Africa has generally responded well to the demands for a clear, accountable and transparent government. A comprehensive legislative and infrastructural framework has been put in place by government, and this framework has been operationalized with the involvement of all spheres of society (e.g. the public sector, private sector, and civil society). The Public Service Commission (PSC) has been at the forefront of the creation of an ethics infrastructure that protects the public interest from abuse by private and sectoral interests. It was instrumental in developing and implementing the Code of Conduct and the drive for senior managers in the public service to disclose their financial interests¹. As such, the PSC recognizes the need to maintain a co-ordinated and sustained response to promoting integrity. Given the current climate, and the evolutionary process in building an ethics infrastructure the time is right to move towards a structured approach to the management of conflicts of interest.

Essentially, a conflict of interest system creates public integrity in public officials and encourages the perception that government is inherently honest. The main purpose of a conflict of interest system is to promote the perception of integrity in government by preventing conflicts of interest before they occur. It also brings a new dimension in the fight against corruption as it can be premised on the notion of keeping honest public servants honest and protecting such officials against corrupt practices.

There are many approaches that South Africa could adopt in relation to the management of conflicts of interest but essentially the objectives should be underpinned by the following:

- to promote and implement conflicts of interest standards thereby enhancing integrity and effective processes for risk identification;
- to identify the key ethical issues and problems related to conflicts of interest;
- to develop a modern conflict of interest policy that fosters public confidence in the government in general and in particular, the integrity of public officials and public decision-making;
- to promote a public service culture where conflicts of interest are properly identified and resolved or managed;
- support partnerships between the public, private and civil society sectors, in accordance with clear public standards defining the parties' expected roles and responsibilities for integrity; and
- to provide a clear factual base for effective identification and management of individual cases, and for possible sanctioning where necessary.

¹The Code of Conduct was implemented in 1997. The Financial Disclosure Framework was implemented in 1999 when all HoD's were required to declare their financial interests. The Framework was extended to all SMS members in 2000.

I.2 PURPOSE OF THIS REPORT

This report originates from the need to develop a system or framework to manage conflicts of interest in the South African Public Service. It must be remembered that public officials are also private individuals. There will be occasions when a public official's own private interest may come into conflict with his/her public duty which is to put the public interest first. Where reasonably possible, a public official should avoid conflicts between his/her personal interest and the public interest. However, where conflicts of interest cannot reasonably be avoided, it should be managed effectively. It is the purpose of this report to propose a framework to manage conflicts of interest in the public service.

It is recognized that most public servants in South Africa are honest. Despite this our anti-corruption strategies have given little focus to the protection of honest public servants. Therefore, there is a need to put in place a system that keeps our honest public servants honest. By recommending a policy or framework for the management of conflicts of interest this report not only seeks to promote the idea of integrity in government but also to promote the honest public servant.

There are many misconceptions about conflicts of interest. Some of them are that it is something to be ashamed of and that it should be hidden or ignored. By placing emphasis on the management of conflicts of interest and by proposing a framework to manage conflicts of interest the aim is to dispel the misconceptions of conflicts of interest.

I.3 THE ROLE OF THE PUBLIC SERVICE COMMISSION REGARDING CONFLICTS OF INTEREST

Its mandate and its work in the area of professional ethics have allowed the PSC to develop an appreciation for the debate on conflicts of interest. In terms of Section 196 of the Constitution of the Republic of South Africa, 1996, the PSC is mandated to promote the values and principles governing public administration. One of these values {Section 195 (1) (a)} is to promote and maintain a high standard of professional ethics in the public service. Hence, the Code of Conduct for Public Servants and the Financial Disclosure Framework for senior managers in the public service were developed and implemented.

The Code of Conduct, by addressing issues such as gifts and remunerative work outside of the public service, set the basis for, and was the first initiative for managing conflicts of interest in the South African public service. The Code of Conduct exemplifies the spirit in which public officials should perform their duties, and it points out what should be done to avoid conflicts of interest. It also indicates what is expected of public officials in terms of their personal conduct in public and private life. Thus, the Code of Conduct sets minimum standards for ethical conduct in the public service. The Code of Conduct when brought into relation with other legislation such as for example the Prevention and Combating of Corrupt Activities Act, 2004 forms a strong basis for setting minimum standards for ethical conduct in the public service (See Table 1).

Table I: Minimum standards for ethical conduct in the public service²

Issue	Code reference	Relevant Legislation
No unfair discrimination	C.2.6 & C.3.6	Constitution, Promotion of Equality and prevention of Unfair Discrimination Act
No conflicts of interest	C.4.5	Prevention and Combating of Corrupt Activities Act
No party political activities in the workplace	C.2.7	
No favouritism	C.3.3	Prevention and Combating of Corrupt Activities Act (only when linked to benefit being given); depending on circumstance, possibly also Promotion of Equality and prevention of Unfair Discrimination Act
No abuse of equipment and / or information	C.2.9	Promotion of Access to Information Act (depending on nature of abuse of information)
No disclosure of information classified or implied as being confidential or secret	C.4.12 & C.5.4	Public Service Act
No remunerative work without approval, possibly prohibited altogether for certain levels	C.5.5	Public Service Act
No remunerative work without approval, possibly prohibited altogether for certain levels	C.5.5	Public Service Act
No abuse of alcohol or other intoxicating substances	C.5.2	
No gifts (including entertainment) of excessive value to be given or received – value to be specified, all gifts given or received to be recorded in a register	C.5.3	Public Service Act
All examples of fraud, corruption, nepotism, maladministration or any other act that constitutes an offence to be reported to manager or to a confidential Helpline	C.4.10	Protected Disclosures Act

In its continued drive to promote the perception of integrity, the PSC was instrumental in developing and managing the Financial Disclosure Framework. In terms of this framework, all senior managers in the public service have to disclose their financial interests on an annual basis. Such disclosures promote both transparency and accountability in order to detect and prevent real conflicts of interest, especially in supply chain management.

Regulations were put in place for the management of the Financial Disclosure Framework. These Regulations were published in Government Gazette No. 22308 of 25 May 2001. In terms of the Regulations the PSC was given a critical role with regard to the management of the Financial Disclosure Framework and in particular, to identify areas of conflicts of interest. Briefly, this role involves the following:

²The source for Table I is the Report on Measuring the Efficacy of the Code of Conduct published by the PSC in 2006.

- The PSC administers the Financial Disclosure Framework.
- It scrutinizes the information as disclosed by senior managers.
- When it finds that a registrable interest of a senior manager conflicts or is likely to conflict with the execution of any official duty of that employee, it verifies the information regarding that interest and consult with the employee in question.
- If, after such verification and consultation, the Commission is of the opinion that there is conflicts of interest or that conflicts of interest is likely to occur, it refers the matter to the relevant Executing Authority.
- The Executing Authority must then consult with the employee concerned and take appropriate steps, including, but not limited to:
 - ▶ disciplinary action; or
 - ▶ the granting of a waiver to the employee in respect of a future conflict of interest.
- An Executing Authority must report back to the Commission within 30 days and state whether steps were taken and if no steps were taken state the reasons therefore. (i.e monitoring role of the Commission).

Basically an effective conflicts of interest framework rests upon three pillars. This includes a disclosure framework and a comprehensive Code of Conduct, which had been implemented in the public service. The next or the third evolutionary phase is a structured approach to a conflicts of interest system i.e. a framework to manage conflicts of interest. Thus, it is obvious to the PSC that the management of conflicts of interest must be done in a structured manner. The PSC can structure this through its ability to develop and make rules as indicated in Section 11 of the Public Service Commission Act of 1997. Section 11 provides that the PSC may make rules for the investigation, monitoring and evaluation of those matters to which Section 196 of the Constitution relates. In terms of Section 196 of the Constitution of the Republic of South Africa, 1996, the PSC is mandated to promote the values and principles governing public administration. One of these values {Section 195 (1) (a)} is to promote and maintain a high standard of professional ethics in the public service. The management of conflicts of interest is an intrinsic part in the promotion of professional ethics. Therefore, the PSC may make rules pertaining to the management of conflicts of interest.

Moreover, the PSC, in terms of the Constitution, must also give direction and advice aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values as set out in the Constitution. In this sense it is mandated to give advice to the executive authority on the management of conflicts of interest. Such advice could lead to the development of a framework to manage conflicts of interest in the public service.

I.4 RESEARCH METHODOLOGY

A comparative study was undertaken of countries that have conflicts of interest systems in place or that are experienced in dealing with conflicts of interest. These countries are Canada, Germany and Australia. Canada has an advanced conflict of interest system which has been in place for over thirty years. Germany, through its public service experience provided an opportunity to learn about conflicts of interest which is managed only by applying rules and regulations. In Australia conflicts of interest is managed on a decentralized basis and thus provided the opportunity to learn how conflicts of interest could be managed at a departmental level. The comparative study included the following:

- A study tour to Germany and Canada by officials of the OPSC. These officials had face-to-face discussions on matters pertaining to conflicts of interest, with officials who represented government departments and institutions in Germany and Canada. Presentations were also made on conflicts of interest by these representatives as well as by members of the OPSC delegation. The lessons learned from these engagements form part of the inputs to this report.
- A comprehensive literature review was made of the conflicts of interest systems of the countries as indicated above. This literature review consisted of a internet search for good practice documents and library searches in South Africa as well as a desk study.

I.5 OUTLINE OF THE REPORT

Having sketched the purpose of the report, the importance of a conflict of interest system, as well as the role of the PSC regarding conflicts of interest and the research methodology it needs to be mentioned that the next chapter (chapter 2) provides a general discussion of the theoretical aspects pertaining to conflicts of interest. This chapter looks at issues such as what conflicts of interest is, the types of conflict of interest as well as analyzing whether it is wrong to have a conflict of interest. Essentially, it provides indicators which a public official should consider when making a decision on whether his/her public duty and private interests are in conflict.

The third chapter looks at good practice regarding the management of conflicts of interest. It draws some key aspects based on the experiences of countries such as Germany, Canada and Australia. The purpose of this chapter is not to provide a critique of the countries' approaches but to lift themes that have relevance to the South African context.

Emanating from the lessons learned through the international perspectives as highlighted in chapter three, the fourth chapter deals with the key considerations in developing a conflicts of interest system. This chapter also looks at the key pillars of a conflict of interest system and the approaches which should be considered in South Africa for managing conflicts of interest.

Finally, chapter five deals with the recommendations of the report. Included with the recommendations, a draft conflicts of interest system is proposed for the South African public service.



CHAPTER 2

UNDERSTANDING CONFLICTS OF INTEREST

2.1 INTRODUCTION

It is of value to this study that the theories pertaining to conflicts of interest be explored. Accordingly, this chapter provides a theoretical discussion on conflicts of interest. In particular it looks at issues such as what conflicts of interest are, the types of conflicts of interest as well as analyzing whether it is wrong to have a conflict of interest. Essentially, it provides indicators which a public official should consider when making a decision on whether his/her public duty and private interests are in conflict.

2.2 WHAT IS A CONFLICT OF INTEREST?

While there may be interpretational issues around what constitutes a conflict of interest there is little contestation around the definition of conflicts of interest. Most expressions on the definition take their lead from the OECD Guidelines and Country Experiences. In terms of these guidelines conflicts of interest can be defined as “a conflict between the public duties and private interests of a public official, in which the public official has private capacity interests which could improperly influence the performance of his/her official duties and responsibilities” (OECD Guidelines: 2003:24). Moreover, in terms of the Portuguese experience a conflict of interest is an opposition stemming from the discharge of duties where public and personal interests converge, involving financial or patrimonial interests of a direct or indirect nature (OECD Guidelines: 2003:57). Both of these definitions infer that a conflict of interest arises when public officials have to make decisions at work that may affect their private interests. For example, an official approves a tender for a particular company with the knowledge that one day when leaving the public sector he will get a job at that particular company for which the tender was granted.

The above-mentioned is a rather narrow approach when looking at conflicts of interest. One needs to look at conflicts of interest more comprehensively. In this respect it needs to be mentioned that the interaction between the private and public sectors has made the issue of conflicts of interest much more complex. In recent years, especially in South Africa, a great velocity between the public and private sectors was evident. In South Africa for example, the government promotes mechanisms such as Black Economic Empowerment. This interaction has given rise to the fact that whilst conflicts of interest in the past focused on traditional sources of influence such as nepotism, gifts and hospitality, conflicts of interest in recent years are more directed on:

- a public official having private business interests in the form of partnerships, shareholdings, board membership, investments and government contracts;
- a public official leaving to work in a private company or a Chief Executive Officer taking up a key position in a government department with a commercial relationship with his/her former company; and
- a public official having affiliations with other organizations (e.g. an official sits on the board of a non-profit organization that receives funding from the official's department).

While having appreciation for the complexity, this does not suggest that we should ignore the traditional sources of influences such as nepotism, gifts and hospitality when one wants to develop a conflict of interest framework. Having said this the key question about conflicts of interest is whether a public official is in a situation where his/her private interests might improperly influence the way he/she does his/her job.

2.3 TYPES OF CONFLICTS OF INTEREST

Conflicts of interest are broadly divided into three categories. These categories do not necessarily suggest that there is a clear division between the categories since the area of conflicts of interest is grey and much blurring can occur between the categories. The categories are perceived conflict of interest, a potential conflict of interest and an actual conflict of interest. Table B shows an analysis with examples of these categories.

TABLE 2: TYPES OF CONFLICTS OF INTEREST³

Perceived Conflict of Interest	Potential Conflict of Interest	Actual Conflict of Interest
A public official is in a position to <u>appear</u> to be influenced by his/her private interests when doing his/her job.	A public official is in a position where he/she <u>may</u> be influenced in the future by his/her private interests when doing his/her job	A public official is in a position to be influenced by his/her private interests when doing his/her job
For Example: The wife of one of the senior managers of the Office of the Public Service Commission is the owner of a stationary company who is a service provider for the government. This may be perceived as a conflict of interest.	For Example: The same senior manager sits on the committee which is to decide on a service provider that will supply stationary for the government for the next three years. The senior manager's wife, who is the owner of the company, applied for the contract. In this case there is a potential of conflict of interest.	For Example: An actual conflict of interest will occur if the senior manager does not disclose the fact that his wife is the owner of the company and he does not recuse himself from the tendering process. An actual conflict of interest may occur if it would be possible for the senior manager to make a decision based on his private interests.

Without a system that guides decision making on conflicts of interest it becomes extremely difficult to manage conflicts of interest, whether it be perceived, potential or actual.

2.4 KEY PRINCIPLES OF A CONFLICT OF INTEREST SYSTEM / POLICY

The development of a conflict of interest system / policy is a complex process. An effective conflict of interest system must be based on sound fundamental principles which talks to what a system should do and should not do. These underpinning principles should talk to the objectives and enhance the desired outcomes. Unless one fully understands the significance of such principles the advocacy and implementation of the system will be flawed. This view is supported by Mark Davies (2005: 5) where he identifies the eight fundamental principles that underlie an effective conflict of interest system. There is little argument with these suggested principles. The challenge is to understand them in a way that makes sense to the specific country context. Thus, it is important to give these principles meaning within the South African context.

³Table 2 is adapted from the ICAC Toolkit on Managing Conflicts of Interest in the Public Sector.

- ***The system / policy should promote both the reality and the perception of integrity in government***

Public confidence is important to the smooth functioning of a government. A government cannot function effectively if the public believes that its officials are corrupt, even if they are not. Every government is obligated to put mechanisms in place that would promote the idea that it is acting with integrity. Such mechanisms would include Codes of Conduct, financial disclosure frameworks as well as frameworks to manage conflicts of interest. By developing such mechanisms a government not only creates the perception of integrity but also shows a commitment towards managing conflicts of interest.

- ***The focus should be on prevention, not punishment***

The focus of a conflict of interest system / policy should be on prevention and not on punishment. The approach must therefore be proactive rather than reactive.

- ***The honesty of the majority of public officials must be recognised***

A conflict of interest system / policy assumes that the groundswell of public servants is honest and wants to do the right thing. An effective conflict of interest policy must demonstrate a balance between protecting the integrity of public decisions and the private interests of public servants. Therefore, a conflict of interest system / policy provides guidance to the honest public servant and helps deter the corruptible.

- ***Morality should not be regulated***

According to Davies (2005: 6), in most countries a conflicts of interest system does not regulate morality. Because, conflicts of interest laws are about the reality and perception of divided loyalty, of conflicts, primarily financial conflicts, between one's private interests and public duties therefore, conflicts of interest laws cannot solve moral problems because it is not about morality.

- ***The system/ policy must be tailored to the particular nation, society, and culture***

As indicated earlier, conflicts of interest systems throughout the world have similar key principles. An important difference is the identification of the conflict of interest within a particular society and the tailoring of the resolutions of conflicts of interest problems accordingly. For example, a prohibition on a public official having an ownership interest in a company doing business with the government will probably work quite well in an urbanized society but may prove disastrous in a rural community. Thus, when developing a conflict of interest system / policy one has to take the culture and needs of a society into consideration.

- ***It undergirds the essential values of the nation.***

A conflict of interest system / policy undergirds the essential values of the nation. South Africa is fortunate in that the values and principles of public administration are clearly stipulated in the Constitution. Hence, the development of a conflict of interest system in the South African context must be undergirded by these values and principles. If one has regard for the principle that peoples needs must be responded to and the public must be encouraged to participate in policy-making, a conflict of interest system should encourage citizen participation in government by providing guidance to public officials and imbue confidence in citizens that their public servants are serving the public interest.

- ***Government money should be saved***

A conflict of interest system / policy does not punish inefficiency. However, it does save money by preventing abuse that favours personal interest and reward. Davies (2005: 7) argues that the system protects the public against, for example, a customs inspector looking the other way instead of imposing duty on an import item because he/she works on the outside for the importer. A conflict of interest system / policy, in preventing such abuse has a positive economic impact.

- ***Ensure that the public have an interest in the system***

When the government develops procedures for the management of conflicts of interest the public should be afforded the opportunity, by virtue of stakeholder representation, to comment on such procedures. The public could provide government with meaningful strategies to manage conflicts of interest thereby strengthening such a policy. Public participation is also to ensure that an all inclusive policy on conflicts of interest is developed.

2.5 IS IT WRONG TO HAVE A CONFLICT OF INTEREST?

There are many misconceptions about conflicts of interest. Some of them are that it is something to be ashamed of and it should be hidden or ignored. In terms of media commentary on the matter it would appear that in the South African context we have fallen into these misconceptions.

Conflicts of interest are not wrong in themselves. It is how they are managed that is important. In this regard it should be noted that public officials are also private individuals, and there will be occasions when an official's own private interests may come into conflict with his/her public duty which is to put the public interest first at all times. Where reasonably possible, a public official should avoid conflicts between his/her personal interest and the public interest. However, where conflicts of interest cannot reasonably be avoided, an official has a responsibility to identify and effectively manage any conflicts of interest he/she may have, in consultation with his/her supervisor. Let us look at the example of the Town Planner.

Because of his/her position as a Town Planner he or she may have information on where developments may take place or would be planned for. Such information if it becomes known would obviously inflate the value of the property concerned. He/she could be tempted to buy the property at current market prices and later sell it at a bigger margin after the development becomes public knowledge. Or on the other hand if a Town Planner has shares in a property development company which may bid for a tender to develop or construct a site or a building and he/she sits on the Bid Committee. Such a situation should always be declared by an official in order to avoid conflicts of interest.

2.6 HOW DOES A PUBLIC SERVANT KNOW IF HE/SHE HAS A CONFLICT OF INTEREST?

Just because an official has personal interests outside of work, does not automatically mean that there is going to be a conflict of interest. However, if something arises at work that is associated with those interests, then an official may have a conflict of interest.

In its Toolkit on Managing Conflicts of Interest the Australian Independent Commission Against Corruption advocates that an official needs to consider the following parameters when making a decision on whether or not his/her public duty and private interests are in conflict:

- financial and economic interests, such as debts or assets;
- a family or private business;
- a secondary employment commitment;
- affiliations with for-profit and non-profit organizations, sporting bodies, clubs and associations;
- affiliations with political, trade union or professional organizations, and other personal interests;
- obligations to professional, community, ethnic, family or religious groups in a personal or professional capacity, or relationships to people living in the same household;
- enmity towards or competition with another individual or group;
- significant family or other relationships with clients, contractors or other staff working in the same (or related) department;
- highly specialist skill(s) in an area where demand for the skill(s) frequently exceeds supply; and
- future employment prospects or plans (i.e. post-separation employment).

In terms of the above-mentioned parameters it needs to be noted that it is not always possible to avoid having a conflict of interest. Where conflicts of interest cannot reasonably be avoided, an official has a responsibility to identify and effectively manage any conflicts of interest he/she may have, in consultation with his/her supervisor. For example, a public official who sits on the board of a company involved in a partnership with the department in which he/she is employed should declare such a situation. If such a company obtains contracts from the department where the official is employed he/she should recuse him/herself from any activity that may lead to the company receiving a contract from the department in which he/she is employed. Therefore, public officials at all levels should perform their duties in a fair and unbiased way, and the decisions they take should not be affected by self-interest, private affiliations, or the likelihood of personal gain or loss.

2.7 AVOIDING ACTUAL CONFLICTS OF INTEREST

Avoiding and preventing situations that could give rise to perceived, potential or actual conflicts of interest is one of the primary means by which a public servant maintains public confidence in the impartiality and objectivity of the public service. If a conflict does arise between the private interests and the official duties of a public servant the conflict should be resolved in favour of the public interest. Some of the primary conflicts of interests scenarios that a public servant should consider managing during his/her day to day activities are:

- receiving of gifts, hospitality and other benefits;
- performing outside employment or activities;
- solicitation and “cooling-off” periods; as well as
- giving preferential treatment.

2.8 SUMMARY

In this chapter some theoretical perspectives on conflicts of interest were pointed out. In essence, conflicts of interest was defined as a conflict between the public duties and private interests of a public official in which the public official has private-capacity interests which may improperly influence the performance of an official's duties and responsibility. A distinction was also made between an actual conflict of interest, a perceived conflict of interest and a potential conflict of interest. Whatever the situation may be, it was argued that a public official should always be aware of a situation of conflicts of interest and where reasonably possible he/she should avoid it because the community has the right to expect that public officials at all levels perform their duties in a fair and unbiased way. The next chapter deals with international perspectives and experiences pertaining to conflicts of interest.



CHAPTER 3

DRAWING FROM INTERNATIONAL PERSPECTIVES AND EXPERIENCES

3.1 INTRODUCTION

This chapter looks at good practices regarding the management of conflicts of interest. It draws on some key aspects based on the experience of countries such as Germany, Canada and Australia in the management of conflicts of interest. While the institutional frameworks have been studied, emphasis has been placed on understanding the implementation and management of the conflicts of interest policy and/or system. Particular choices and directions have been adopted by the various countries and there was a need to understand what underlies this, and its relevance to the South African situation. Therefore, this chapter is not intended to provide a critique of the countries' approaches but to lift themes that have relevance to the South African context. Some of these themes are discussed in detail in chapter 4 of this report with the aim of pointing out what should be taken into account when crafting a framework for the management of conflicts of interest. Of note is that irrespective of the different country approaches, a common action is prevalent: to manage conflicts of interest.

3.2 CONFLICTS OF INTEREST: OVERVIEW OF INTERNATIONAL PERSPECTIVES

In this section an overview of the conflicts of interest systems prevalent in Germany, Canada and Australia will be given. Understanding of the Canadian model includes the management of conflicts of interest in so far as Public Office Holders (Political Office Bearers) are concerned.

3.2.1 BASIS FOR MANAGING CONFLICTS OF INTEREST: GERMAN PERSPECTIVE

The German civil service uses an integrated system of rules and regulations to manage conflicts of interest. Numerous regulations, including primary and secondary legislation as well as non-legal documents, indicate principles and rules for avoiding conflicts of interest. Therefore, laws and legal administrative regulations are the core instruments that define official obligations for civil servants. Because there is no conflicts of interest system in place in Germany the regulations pertaining to civil service responsibilities are the primary source for setting standards to avoid conflicts of interest. In terms of the German civil service laws, key principles and obligations are laid down that regulate the responsibilities of civil servants. Some of these principles and obligations include the following:

- full dedication to the profession as a civil servant;
- limitation of the opportunity for involvement in outside activities;
- impartial, fair and loyal fulfillment of the duties of public office orientated towards the common welfare;
- restrictions on political activities;
- fulfilling duties selflessly and to the best of one's knowledge and conscience, including the obligation to decline any rewards or gifts;

- permission required for the acceptance of gifts connected to public office;
- full obedience; civil servants are bound to the instructions of their superiors provided it is a legal instruction; and
- the demonstration of behaviour that commands respect at all times, whether in the capacity of the public service or outside.

These legal measures are not implemented in isolation but are supported by preventive measures like training, counseling and also periodic awareness-raising. What is significant of the German way of managing conflicts of interest is that full dedication to the profession as a civil servant is advocated. There is a principle of life tenure that ensures the independence and neutrality of the state administration. According to this principle, apart from retirement when the legal age has been reached or discharge on own request, removal from service is only possible in exceptional cases expressly named by a legislator, for example as a disciplinary measure or when declared unfit for service. This is supported by the principle that civil servants should receive the appropriate salary and pension in keeping with an office, including a training programme. Under this principle, civil servants may dedicate themselves to their life profession with financial independence so that the susceptibility of corruption motivated by the safeguarding of one's livelihood is out of the question.

The afore-mentioned two principles are the cornerstones for managing conflicts of interest in the German civil service. The assumption is that once a civil servant has a job for life and financial independence is guaranteed then there would not be room for any conflicts of interest. Thus, in line with the concept of public duty, there are laws (as indicated above) which describe specific rights and duties that preclude potential conflicts of interest situations for civil servants. The aim of these laws is to encourage high standards of conduct and to counteract violations of duty.

3.2.2 BASIS FOR MANAGING CONFLICTS OF INTEREST: CANADIAN PERSPECTIVE

In Canada great efforts have been made with regard to the implementation of ethics initiatives. These efforts date back as far as 1973 and led to a well-established conflicts of interest system. The Canadian Conflict of Interest Code was introduced by the Canadian Prime Minister with the aim of enhancing public confidence in the integrity of public office holders and the decision making process in government and thereby trying to achieve high ethical standards. Rather than setting out a long list of rules, Canada's approach has been to establish broad and clear standards based on a set of principles. The goals of this approach are to inspire integrity and to achieve transparency by using proactive steps that encourage open, ethical decision-making. The objectives of the Conflicts of Interest Code in Canada is to enhance public confidence in the integrity of public office holders and the decision-making process in the Canadian Government. It establishes clear rules of conduct and post-employment practices to minimize the possibility of conflicts arising between the private interests and public duties (OECD Guidelines: 2003: 128). Examples of these include:

- Limitations on outside activities, acceptance of gifts, invitations to special events and post employment activities.
- Recusal mechanisms to assist public office holders in avoiding conflicts of interest in the performance of official duties.
- Not allowing public office bearers to act after they leave public office, in such a manner as to take improper advantage of their previous employment.

Canada has a well developed conflict of interest system as well as a Conflicts of Interest Code for Members of the House of Commons and the Prime Minister's Conflicts of Interest and Post Employment Code for Public Office Holders. This latter code is administered by the Office of the Ethics Commissioner, an independent institution. Rules pertaining to conflicts of interest are applied stringently by this Office. It also serves as an advice centre to Public Office Holders where conflicts of interest are concerned. Although the Conflicts of Interest Code does not have the force of law, Public Office Holders need to sign a document certifying that, as a condition of their holding office, they will observe the Code.

The OPSC delegation's visit to Canada in November 2005 was on the eve of Mr Justice John Gomery's report into a sponsorship scandal that impacted not only the Canadian Parliament but the whole of the Canadian populace. At the heart of the sponsorship scandal is the allegation that senior Liberal Party (ruling party) officials under the leadership of the then Prime Minister Jean Chrétien created a system by which advertising firms were overpaid for their work, with a portion of the excess cash being funneled back to the Liberal Party. At least, these were the allegations. However, these allegations are enormous in the sense that the citizenry was calling for an election during December 2005. The Liberal Party, who was the ruling party under the leadership of Prime Minister Paul Martin lost its power subsequent to the election.

An important point to learn from the above-mentioned experience is that no matter the strength of a conflict of interest system it will always be under pressure and subjected to challenges. These challenges place a heavy workload on the management of conflicts of interest in any public service.

3.2.3 BASIS FOR MANAGING CONFLICTS OF INTEREST: AUSTRALIAN PERSPECTIVE

The Australian conflicts of interest model is in operation for more than 28 years. It became the basis of the Australian Public Service Values and Code of Conduct which was implemented at a later stage. The approach to managing conflicts of interest is one of promoting ethical conduct by means of the Australian Public Service Values and Code of Conduct, rather by legislating detailed rules for compliance. In other words, it is more values than compliance-based (the difference between these two concepts is made clearer in Chapter 4.2 of this report). Explicit in this Code is the requirement that an Australian Public Service employee must disclose, and take reasonable steps to avoid any conflicts of interest in connection with Australian Public Service employment.

In Australia the management of conflicts of interest operates on a decentralized basis. Specific roles are given to the Head of an Agency and the Australian Public Service Commission with regard to conflicts of interest. Agency Heads are required to make sure that the Australian Public Service Values are upheld and promoted. They must also ensure compliance with the Code of Conduct. Because of the decentralization of authority Agency Heads are forced to ensure that their employees understand and abide by the obligations in terms of ethical behaviour, including the disclosure and management of conflicts of interest (OECD: 2003: 103). Because the management of conflicts of interest is decentralized it is incumbent upon Australian Agency Heads to put mechanisms and procedures in place in order to avoid breaching of the Australian Public Service Values and Code of Conduct.

The Australian Public Service Commission monitors and evaluates all practices relating to public administration including conflicts of interest. It also evaluates the adequacy of systems and procedures in agencies for ensuring compliance with the Code of Conduct. In addition to these functions, the Commission also issues guidelines and good practice advice to assist the Agency Heads and individual employees to carry out their responsibilities effectively. In this respect, for example, the Commission would issue guidelines highlighting specific areas of sensitivity that managers and employees need to be aware of. The Australian Public Service Commission functions more or less on the same basis as the South African Public Service Commission in the sense that, as an independent institution, it monitors and evaluates the performance of other government institutions in terms of public administration practices.

3.3 SUMMARY

This chapter addressed good practices regarding conflicts of interest through the perspective of Germany, Canada and Australia. Emanating from this understanding, it has highlighted key considerations relevant to the development of a conflicts of interest system for South Africa. Such considerations include whether the system should be values or compliance based or a combination of the two, provide for “cooling off” periods, address remunerated work outside of the public service, the acceptance of gifts and the location for the management of conflicts of interest. These are issues that must be taken into account when crafting a framework for the management of conflicts of interest in the South African public service and are addressed in Chapter 4 of this Report.



CHAPTER 4

KEY CONSIDERATIONS FOR MANAGING CONFLICTS OF INTEREST IN THE SOUTH AFRICAN PUBLIC SERVICE

4.1 INTRODUCTION

Understanding and exposure to the management of conflicts of interest in other countries has provided an appreciation for relevant issues to the South African context and helped inform the discussion in the development, implementation and management of a conflict of interest system. What follows in this Chapter is a discussion on pertinent issues that bear relevance to the debate on conflicts of interest within South Africa.

4.2 DECIDING ON AN APPROACH TO CONFLICTS OF INTEREST

In the process of developing a conflict of interest system for the South African public service two approaches should be taken note of, namely, a values-based and a compliance-based approach. Different countries use different mechanisms to manage conflicts of interest. These mechanisms are modeled around the idea of having a compliance-based or a values-based conflicts of interest framework. In Germany for example, the management of conflicts of interest is interspersed with the legislative framework of the country. Numerous regulations, including primary and secondary legislation as well as non-legal documents, indicate principles and rules for avoiding conflicts of interest. Such laws and legal administrative regulations are the core instruments that define official obligations for civil servants in Germany. These legal measures are not implemented in isolation but are supported by preventive measures like training, counseling and also periodic awareness-raising. Thus, Germany uses an integrated system of rules and regulations to manage conflicts of interest.

In Canada and Australia one can say that a stand alone conflict of interest system is used to manage conflicts of interest. These countries have conflicts of interest codes that set out clear standards to inspire integrity and to achieve ethical standards. Essential to understand is that whatever mechanism one may use, conflicts of interest plays itself out in a manner so as to fit under an umbrella under which it could be managed.

4.2.1 A COMPLIANCE-BASED APPROACH

Compliance-based laws and regulations prohibit specific actions and conduct. For example, a compliance-based approach could state as its clause: “No public servant will accept a gift from any person or institution doing business with the government”. The tone in this example clearly indicates what is acceptable and what is not and therefore gives clear guidance. Such an approach can be extremely rigid, tends to be rule-bound and if not drafted properly could have an overly strict approach that infringes on the rights of a public servant. This could have unintended consequences in that it could discourage potential applicants from entering the public service. However, since it is very specific and does not have room for loopholes, it is easier to enforce as specific sanctions could be introduced for transgressions.

4.2.2 A VALUES-BASED APPROACH

The values-based approach concentrates on doing what is right. Such an approach does not prescribe, but focuses on the values underpinning an action. It inspires public officials to certain ethical standards. If one extends the earlier example used under the compliance-based approach it would state: “A public servant may not accept gifts or hospitality of significant value from individuals or firms...”

As earlier indicated a key principle of an effective conflict of interest system is to promote essential values and this is essentially what a values-based system strives to achieve. However, a values-based system leaves loopholes as a result of different interpretations, and this makes it difficult to enforce. When a situation arises and enters the public domain, these varied interpretations do not imbue citizens with the confidence that their public officials are acting in the public interest. Recent incidents will attest to the confusion and intense debate surrounding what constitutes a conflict of interest.

4.2.3 A COMBINATION OF THE TWO APPROACHES

Given the advantages and disadvantages of the two approaches, there will always exist schools of thought in strong support of either. It may be that in young public services a compliance-based approach is more attractive as it sets out clear rules for behaviour and enforcement. However, an ethics infrastructure cannot merely be built on rules addressing negative behaviour but should inculcate the values that guide the public service. This is pretty much in the direction that the South African public service has gone in creating a sound ethics infrastructure. However, recent conflict of interest debates within South Africa suggest a need for greater clarity on the issue, and an approach that is solely values-based could add to the confusion and undermine public confidence. Given the persuasive arguments in both approaches it would suggest that the best approach to developing a conflict of interest system is to have a values-based and a compliance-based approach. Davies (2005: 9) implies that one should first develop a values-based code of ethics for public officials, which draws upon, the essential values of the nation and from out of that code of ethics should be drawn specific, compliance-based conflicts of interest rules, violation of which may subject the offending public official to the appropriate sanction. This is exactly what the Canadian government had done. The Canadian conflicts of interest system is pre-empted by a code of ethics, followed by descriptive rules and regulations on conflicts of interest and rounded off by a declaration of assets.

4.3 THE IMPORTANCE OF CODES OF CONDUCT AND FINANCIAL DISCLOSURE FRAMEWORKS

Codes of Conduct set out essential values usually replicated from the values of the society. They serve as a guideline to employees as to what is expected of them from an ethical point of view. A Financial Disclosure Framework, on the other hand, enhances public confidence in the integrity of public officials and minimizes the possibility of conflicts arising between the private interests and public duties of public officials. The Code of Conduct and the Financial Disclosure Framework is seen as important pillars on which a conflict of interest system rests.

The South African public service is in the advantageous position of having these pillars already in place. While there are definitely areas that need to be strengthened, the South African Public Service can now move towards a structured approach to manage conflicts of interest. Improvements to the Code of Conduct and the Financial Disclosure Framework can proceed alongside the development of the structured approach to manage conflicts of interest. Not only is South Africa in line with international practice but there can be little argument around its readiness to embrace the next step.

4.4 SIGNIFICANCE OF “COOLING OFF” PERIODS/POST EMPLOYMENT ACTIVITIES

As one witnesses the increased movement between the public sector and private sector, moves are made to guard against certain conduct. In the private sector, what you essentially see are constraints of trade whereas in the public service more and more reference is made to “cooling off” periods and post employment activities. Essentially, the latter clauses guard against former employees taking employment with an organization with which a public office holder or public servant had direct or significant dealings during his / her last year in office. Attached to the “cooling off” periods are usually time periods and the imposition of conditions. For example, in Canada there is a one year “cooling-off” period (two years for Ministers) on taking employment with any organization with which a public office holder had direct or significant dealings during his/her last year in public office. An additional provision is to prevent public office holders from making representations on behalf of third parties to their former departments and other government agencies with which they had direct and significant official dealings during their last year in public office. Secondly, they are prohibited from giving advice to an employer or client, based on information obtained in the course of their public office if such information was not available to the public.

The Australian Public Service Act does not restrict the type of employment that may be undertaken by former Australian Public Service employees after they retire or resign from the Australian Public Service. However, the OECD Guidelines on Managing Conflicts of Interest stresses that, “while mobility between the public and private sectors is important, and the ensuing transfer of skills and experience are not discouraged, Australian Public Service employees should exercise caution when taking up employment in fields that are closely aligned to their responsibilities with their former agency” (OECD:2003: 107). The areas of caution that should be considered are, firstly, that there are legal restrictions on the disclosure of official information after leaving Australian Public Service employment and in terms of Australian law “any work performed by an employee for an agency is, and remains the intellectual property of the Australian Public Service.” (OECD: 2003: 108).

In essence, the post employment measures are designed to protect the public interest by ensuring that the public office holders do not appear to take advantage of their last year in office to obtain employment with an organization with which they had direct or significant dealings in that year.

Given South Africa’s past history, “cooling-off” periods may be a much more complex issue. For example: A person who has been in exile throughout most of his/her life is appointed as a Director-General of the Department of Aerospace. Because of his/her period in exile he/she hardly has any work experience. The only work experience which he/she stood to gain is by virtue of his/her appointment in the Department of Aerospace. Undoubtedly, he/she will gain a lot of technical experience during his/her time in office, experience which he/she would not gain anywhere else. When he/she leaves office after ten years the challenge in terms of “cooling-off” periods is that of how to prevent a person, such as in this example, from obtaining work in a related field to earn his/her livelihood.

Essentially one cannot disagree with the fact that there is a need for “cooling off” periods. However, this need must be balanced with the legitimate need for economic freedom and activity. The point to take note of when developing a framework for conflict of interest is, on the one hand to allow a person to work in a specific field in which experience was gained but on the other hand ensure that such a person does not play as a broker for the organization in which employment was taken up and any dealings with the government. A possible manner to address this is by putting limitations on companies employing former public servants (excluding them from entering contracts with departments who employed the former officials for a period of a year after the officials had left the department). By doing this it may not be necessary to place restrictions on public servants to seek other employment except in cases where they seek employment with companies that have existing contracts with their erstwhile departments.

The experience of many public services that have “cooling off” periods is the aspect of enforceability. It may be beneficial to put in place policies that stress “cooling off” periods but if no monitoring is taking place “cooling off” periods may become irrelevant once a person has left the employment of the public service. One of the ways of ensuring enforceability would be by including a provision in the contracts of service providers with departments which precludes such service providers to recruit and appoint serving public servants in such departments to work on the projects / tasks which the service provider has been contracted to deliver.

4.5 REMUNERATED WORK OUTSIDE OF THE PUBLIC SERVICE

While the ideal notion is that a public servant is at the service of the public for twenty four hours, in practice this is not always the case. Generally speaking public services around the world allow for the undertaking of remunerative work outside official duties subject to certain requirements. In the case of South Africa the situation is not much different. Section C.5.5 of the Code of Conduct for public servants states that: “an employee does not, without approval, undertake remunerative work outside his/her official duties or use office equipment for such work”. Moreover, Section 30 of the Public Service Act, 1994 (as amended) clearly stipulates that:

- every officer and employee shall place the whole of his or her time at the disposal of the State; and
- no officer or employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the public service, without permission granted by the relevant Executing Authority or an officer authorized by the said authority.

Clearly, in South Africa the policy around remunerative work outside of the public service is in place but the management thereof is an area which departments need to beef up. Recent studies by the PSC and the Auditor-General indicate that remunerated work outside of the public service is a challenge within the South African Public Service. These challenges include the fact that public servants do not always obtain approval for remunerated work outside of the public service and in some cases senior managers accept signing of the Financial Disclosure Form as having been granted permission. In this respect it needs to be noted that senior managers must declare their financial interest as well as whether or not they perform work outside of the public service, annually. The relevant Executing Authority then has to sign the financial declarations acknowledging that he/she has taken note of the financial interests of the senior managers of his/her department. The tendency of senior managers is to regard the financial disclosure form as a medium to obtain approval to perform outside remunerative work i.e. after the commencement of the work whereas they should have used the clauses as stipulated in the Public Service Act, 1994 (as amended).

To strengthen this area, public servants should be made aware of their legal obligation to obtain approval before performing outside remunerative work. After obtaining approval public servants should also disclose specific detail of remuneration received outside their government employment. In order to enhance the management of conflicts of interest, with specific reference to outside remunerative work, public servants should not seek to engage in work that would lead to conflicts of interest or create the perception that such work conflicts with their official duties. In this regard, particularly in relation to directorships in private companies public servants should consider whether:

- a company has entered into, or is in the process of entering into a contractual relationship with the government or its authorities;
- a company receives government assistance; and
- the company’s primary purpose is to lobby government departments on matters related to the public servants’ official duties.

It is interesting to note that in terms of an audit finding in August 2005 by the Auditor-General a total of 1678 senior managers were identified as directors or members in companies and close corporations. This is an indication that more and more public servants are inclined to look for opportunities outside of the public service which is another challenge in the sense that in terms of this finding alone, a heavy workload is incumbent upon the management of conflicts of interest.

Finally, in terms of the requirements for remunerative work outside of the public service one need to strike a proper balance between the interest of the state as an employer and the rights of public servants to lead their private lives free of unnecessary restrictions. It must be remembered that outside activities such as joining social clubs and rendering a service to a religious grouping are part of the reality of life of all people. One cannot formulate policies that would restrict a public servant to participate in such activities or request him/her to first obtain approval if such activities happen after working hours. The challenge is to create a balance between the performance of official activities by public servants and his/her private activities.

4.6 STAFF ROTATION AND THE “THREE EYE” PRINCIPLE

Generally speaking staff rotation is done with the aim for staff development and to build knowledge and experience in an institution. More and more public services use rotation of tasks and staff rotation as a tool to prevent corruption and conflicts of interest. In the German Ministry for the Interior, for example, staff working in areas vulnerable to corruption is bound by the policy that they must rotate their tasks at regular intervals. The aim of staff and tasks rotation is to prevent personal relations which may become too close, and to prevent the abuse of expert knowledge which may lead to conflicts of interest.

Parallel to the notion of staff rotation is the “three eye” principle. This principle presumes the notion that to provide greater scrutiny decisions in fields especially vulnerable to corruption are taken by three staff members.

In the German Ministry of the Interior this principle is heavily capitalized upon. Essentially, it portrays the fact that in the German Ministry of the Interior the planning, award and accounting of public contracts, as a rule, are being performed by various offices within an administration thereby limiting the possibility of potential conflicts of interest and corruption.

In South Africa the situation is not much different. Some departments use two officials to make decisions on procurement whilst others use three to make decisions relevant to procurement. However in most departments a Departmental Control Committee is used to approve all decisions pertaining to procurement. Moreover, where conflicts of interest are concerned specific guidelines are laid down in the Code of Conduct for Supply Chain Management Practitioners of all departments⁴. These guidelines, inter alia, stipulates that Supply Chain Management Practitioners should:

- declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
- not take improper advantage of their previous office after leaving their official position.

Thus, the Code of Conduct for Supply Chain Management Practitioners is aimed at promoting fair dealings and integrity in the daily conduct of government business by all role players involved in supply chain management.

⁴The Code of Conduct for Supply Chain Management Practitioners was issued by the National Treasury. Treasury Practice Note No. SCM4 of 2003

4.7 GIFTS

The issue of gifts in South Africa is an emotive issue because South Africa is characterized by diverse communities with diverse cultures. Because of such diversity the acceptance and non-acceptance of gifts is not always very clear. Most western public services have a total ban on gifts and gratuities except in exceptional cases.

Australian agency policies with regard to gifts are based on the premise that by accepting gifts or benefits it may allow a conflict of interest to develop. In extreme cases, gifts or benefits may be construed as bribes, the acceptance of which is an offence under Australian law, as well as a breach of the Australian Public Service Code of Conduct (OECD: 2003:106). In Germany public servants are not allowed to accept gifts in some cases, especially in vulnerable areas such as supply chain management, whilst in other cases thresholds are placed on the value of gifts that may be received. However, even in these countries where there are clear regulations on what constitutes gifts, officials relate circumstances where they are placed in awkward situations and have to accept a gift, despite the policy ban. Such situations usually arise when for example they are on an official visit or in turn are receiving official visitors, and as a token of appreciation gifts are exchanged. The situation makes it impossible to refuse the gift. Policies have had to cater for such situations. Usually the official may accept, despite the policy ban, and has to immediately register the gift in the gift register. Depending on the gift the official may retain the gift or alternatively it is auctioned within the office.

There is a persisting argument that the issue of gifts from an Afro-centric perspective has grey areas. Let us take the example where a community gives a cow to an official as a gift. In African communities, including South Africa, a cow is highly treasured because usually it is only given to Chiefs and Kings as a present. It also represents a high monetary value. Should the public servant refuse that gift by returning the cow to the community, that community would, because of the cultural significance, be very offended. Essentially, in most cultures it is deemed unacceptable not to accept a gift.

Despite an argument that the issue of gifts from an Afro-centric point of view is not always clear cut, South Africa has put measures in place to regulate gifts. The Code of Conduct stresses that a public official should not use his/her position to obtain private gifts or benefits. The acceptance of any gifts or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the performance of an employee's duties may only be accepted with the express written approval of the Head of Department. Moreover, a public official should not use his/her position to obtain private gifts or benefits. The challenge with these guidelines in the Code of Conduct is that they do give rise to certain interpretational problems, and this is also influenced by the prevailing tradition in the urban/rural divide. Guidelines on the acceptance/non-acceptance of gifts could clarify the grey areas.

4.8 LOCATION FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

As mentioned earlier in this report one of the pillars of a conflict of interest system is effective administration. Without effective administration a conflict of interest system will render itself useless. In the experience of Canada and Australia, the approach differs in that Canada has adopted a much more centralized approach whereas Australia has gone for a decentralized approach in respect of the administration of conflicts of interest. However, in both countries there is an emphasis on the importance of an independent institution overseeing the management of conflicts of interest. The participation of an independent institution in these two countries is seen to better promote the perception of integrity in government. An independent institution could also fulfill the obligation of monitoring and evaluating the application of conflicts of interest policies. Given the size of the public service in South Africa consideration must be given to a more decentralized approach but oversight of the application of the conflict of interest policies should rest within the authority of an independent institution given the importance of the reasons underscoring this type of approach.

In South Africa the PSC is already administering the Financial Disclosure Framework for senior managers as well as monitoring the implementation of the Code of Conduct for all public servants. However, there is a need to put in place a framework for the management of conflicts of interest which takes into account the whole of the public service and not only senior managers as is currently the case. As in the Australian experience, Heads of Departments must administer the disclosure and management of conflicts of interest in respect of officials outside the Senior Management Service (SMS) cadre, and should report breaches to the independent institution. However, the disclosures are not as elaborate as the annual disclosure framework for members of the SMS as officials in the cadre outside of the SMS are only obligated to disclose those interests that have the potential of a conflict of interest.

4.9 SUMMARY

Having obtained an understanding of conflicts of interest and with due consideration to the lessons learned from international best practice, the focus can now be placed on what the South African Conflicts of Interest system should entail. The next Chapter provides recommendations on the implementation of such a system.



CHAPTER 5

RECOMMENDATIONS

5.1 INTRODUCTION

Drawing from the previous chapters, key conclusions and recommendations are highlighted in this part of the report. It *inter alia* proposes options that could be adopted to reach the next evolutionary phase of the integrity framework. The options are either to adopt a “stand-alone” conflict of interest policy or a conflict of interest system. Essentially this chapter argues that whichever direction is chosen, there is still a need to put in place a management framework to manage conflicts of interest.

5.2 RECOMMENDATIONS

South Africa has already progressed well *en route* to a clear, accountable and transparent approach to promoting integrity in government. It has implemented a Code of Conduct setting out essential values, rules and regulations relating to conflict of interest as found in various facets of employment, and a sensible disclosure framework. Thus efforts need to be consolidated and deepened. Key to this is a framework to manage conflicts of interest.

5.2.1 APPROACHES TO MANAGING CONFLICTS OF INTEREST

It is clear that once the different aspects of a conflicts of interest system are in place the management thereof should be clear-cut. However, this is not the case of the South African public service because the different aspects have been implemented on separate occasions and are currently managed independently (i.e. code of conduct, disclosures framework, etc). More importantly, the Financial Disclosure Framework is only applicable to senior managers. Therefore, the challenge for the South African public service is whether at this stage to adopt a “stand-alone” approach to the management of conflict of interest or a combined approach.

5.2.1.1 OPTION ONE: A CONFLICT OF INTEREST POLICY

As a first option it is recommended that a stand alone conflict of interest policy be implemented to manage conflicts of interest. By a “stand-alone” approach, it is meant having a conflict of interest policy separate but complementary to the Code of Conduct and the Financial Disclosure Framework. Such an approach could be implemented by formulating guidelines or a policy on conflicts of interest. Once adopted, the policy could be made applicable to the whole of the public service bearing in mind that the Financial Disclosure Framework, which would be a separate entity, would still be applicable to senior managers.

The advantages of adopting a stand alone approach is firstly, that one does not need to make changes or adapt the current Code of Conduct or the Financial Disclosure Framework since the conflict of interest policy would be formulated on its own but taking cognizance of the principles in the Code of Conduct and the Financial Disclosure Framework. This option does not negate the fact that certain aspects of existing mechanisms such as the Code of Conduct must be revised, for example, a guideline on gifts must be developed to further enunciate the practice. Secondly, from an administrative point of view, the management of conflicts of interest would be much easier because one policy with one dimension is managed at one particular time. Thirdly, a “stand-alone” approach would mean that all public servants would be aware what is applicable to them and what is not because a clear differentiation, especially with regard to the financial declarations by senior managers would be detectable. This approach would mean however that each policy would stand on its own and would have to be managed, evaluated and monitored on its own.

Appendix A attached to this report proposes the implementation of a conflict of interest policy that provides comprehensive measures to be adhered to.

Appendix B proposes the implementation of a conflict of interest policy that adopts a framework approach, e.g. broad prescripts are provided rather than breaking each facet of conflicts of interest into a multitude of prescripts.

These two options could form the basis of a discussion on the approach to be adopted in putting a regulated framework in place.

5.2.1.2 OPTION TWO: A CONFLICT OF INTEREST SYSTEM

This option recommends a combined approach to managing conflicts of interest in the South African public service. This would entail that the Code of Conduct, the Financial Disclosure Framework and the proposed policy on conflicts of interest be amalgamated to form one conflict of interest system. It would mean adapting the current Code of Conduct and the Financial Disclosure Framework and together with a comprehensive policy on conflicts of interest formulate one model to manage conflicts of interest. The advantage of such an approach is that it deals with every aspect at one time. This would at the very least entail regulatory amendments. Given how far reaching some issues can be, this could well require legislative amendment. Because of such ramifications a major drawback is that these could pose time delays as the model would be designed and consulted extensively with relevant stakeholders. Current climate suggests that there is an impatience with putting a conflict of interest policy in place.

Not accepting this option does not mean that it should be disregarded but rather that it could be adopted down the road when all policies pertaining to it have been fully entrenched within the public service. This would be in line with the conceptualization of having a transmuted values-based and a compliance-based conflicts of interest system thereby conforming to the key principles of a conflict of interest system.

5.2.1.3 STRUCTURED FRAMEWORK TO MANAGE CONFLICTS OF INTEREST

This option presupposes that there is existing policy and regulations that need to be managed under a structured framework. It also recognizes that some of these instruments need to be strengthened. This is the current situation in the South African context. Regardless of whether any of the options in paragraph 5.2.1.1 and 5.2.1.2 are adopted, the development of the structured framework can and should proceed.

A key aspect to conflicts of interest is effective administration and management. Currently the PSC plays a vital role as far as the Financial Disclosure Framework is concerned. In addition, the PSC also monitors and evaluates the implementation of the Code of Conduct for public servants. The role of the PSC in relation to maintaining a high standard of ethics and the administration of the Financial Disclosure Framework is comprehensively outlined in Chapter 1 of this report.

Much of the work of the PSC around the Financial Disclosure Framework has been around administering the framework. The refinement around the administrative process has been more than adequate although the overall management of financial disclosures should be improved as earlier alluded to. What is now required is a closer scrutiny of the disclosures to ensure that there is no conflicts of interest. The PSC approach to such scrutiny has been random rather than structured.

For the SMS members the PSC needs to develop a structured set of rules underlining the process of documentation, scrutiny and failures. It is proposed that the PSC put the necessary rules in place in terms of section 11 of the Public Service Commission Act of 1997.

Not only does this provide clarity on approach but also it reinforces the credibility in the eyes of the public that there is an institution “watching out” for the public interest. As can be seen from international experience, the participation of an independent institution is seen better to promote the perception of integrity in government.

Through the structured framework, the PSC will through various approaches be able to ensure that conflicts of interest of senior managers in the public service are appropriately managed. Some of these approaches could include:

- Emanating from a request by either the executing authority or relevant senior manager on areas of possible conflicts of interest emanating from the senior manager's own or his/her spouse's private interests, advise on how best to manage the perceived, potential or actual conflict of interest.
- Of own accord through a sampling of SMS disclosures advise executing authorities and senior managers of perceived, potential or actual areas of conflict that may arise from their or their spouses' private interests.

5.2.1.4 STRENGTHENING OF CAPACITY WITHIN THE PSC

It is recommended that the human resource capacity of the Ethics component within the PSC be increased in order to thoroughly deal with the management of conflicts of interest. It is envisaged that a Chief Directorate be established for this purpose.

5.2.2 MANAGING CONFLICTS OF INTEREST BELOW SMS

It is recommended that the management of conflicts of interest for officials below SMS be performed on a decentralized basis by Heads of Departments and that the PSC oversees and monitors the application of the conflict of interest policy. Key considerations for the approach is the size of the public service, by placing the responsibility exclusively on one central institution generates a number of implementation challenges and problems. In many instances, it is impossible for a central agency to determine whether there is a conflict of interest – line managers are best placed to do so.

Furthermore, it is not envisaged that a similar disclosure framework be developed for officials below the SMS. The emphasis on this level is in relation to potential conflicts of interest. Therefore, to minimize administrative upheaval, the level below the SMS should only disclose those interests that have the potential of a conflict of interests. Departments should report breaches annually to the PSC. The PSC should develop the necessary template for such reporting.

5.2.3 GUIDELINES FOR MANAGING CONFLICTS OF INTEREST AT DEPARTMENTAL LEVEL

The policies annexed to this report could form the basis of a regulatory framework on conflicts of interest. However, departments will have to develop procedures internally to facilitate the management of conflicts of interest. The following guidelines could be followed bearing in mind that no single set of guidelines can address every conceivable situation because conflicts of interest arise in many different ways. When applying the guidelines in practice, it is important to recognize that in many instances, there is likely to be more than one way to effectively manage a conflict of interest. The basic guidelines that should be taken note of are the following:

IDENTIFY AREAS OF RISK FOR CONFLICTS OF INTEREST: The first step in managing conflicts of interest is to identify the areas of risk, and to describe the kinds of conflicts of interest that are likely to occur. In the public service one may find a cluster of issues that are likely to arise from the functions that each department performs. Some examples of these are:

- financial and economic interests (such as debts or assets);
- interacting regularly with the private sector;
- family or private businesses;
- affiliations with for-profit and not-for-profit organizations; and
- involvement in secondary employment that potentially conflicts with an official's public duties.
- contracting and procurement; and
- providing subsidies, financial assistance, concessions or other relief to those in need.

It is important to involve employees across the department and at as low as possible levels, especially in components that may frequently be exposed to situations that may give rise to potential conflicts of interest (supply chain management, etc.) in identifying at-risk areas such as above. Not only will such employees' involvement ensure better coverage of relevant conflicts of interest risks, but it will assist them in analyzing their own circumstances and enable them to identify and report conflicts of interest when they arise.

MANAGING CONFLICTS OF INTEREST WHEN THEY OCCUR: Effective management of conflicts of interest is based on the ability to identify specific conflicts of interest when they occur. Ideally, the aim is to be able to minimize the occurrence of actual or perceived conflicts of interest by identifying and managing them while they remain potential conflicts.

Effective management also depends on staff and managers being aware of the public service's approach to conflicts of interest and their responsibilities towards managing conflicts of interest. Should a policy on conflicts of interest be adopted and implemented and a structured framework be implemented as proposed earlier in this chapter, all staff members will have to be familiar with the contents thereof to ensure that they know what is expected of them.

By virtue of what is expected of them staff and management should be able to:

- recognize all actual, perceived and potential conflicts of interest as they arise; and
- disclose conflicts of interest and clearly document the strategies implemented to manage them.

In managing conflicts of interest Departments should consider strategies in dealing with persons disclosing conflicts of interest. The following could be considered:

- Re-assigning the duties of the official if this can be effected in the interest of the state.
- If it is not possible to re-assign the duties of the official, the feasibility of a transfer to another component if in the interest of the state should be considered.
- If the re-assignment of duties or a transfer is not possible consideration should be given to request the official to resign from the private interest that is causing the conflict of interest.

If a public servant has not disclosed a conflict of interest, departments should deal with such persons in terms of the disciplinary procedures prescribes for SMS member in the SMS Handbook and in respect of persons below the SMS, in terms of the Disciplinary Code and Procedures for Public Servants.

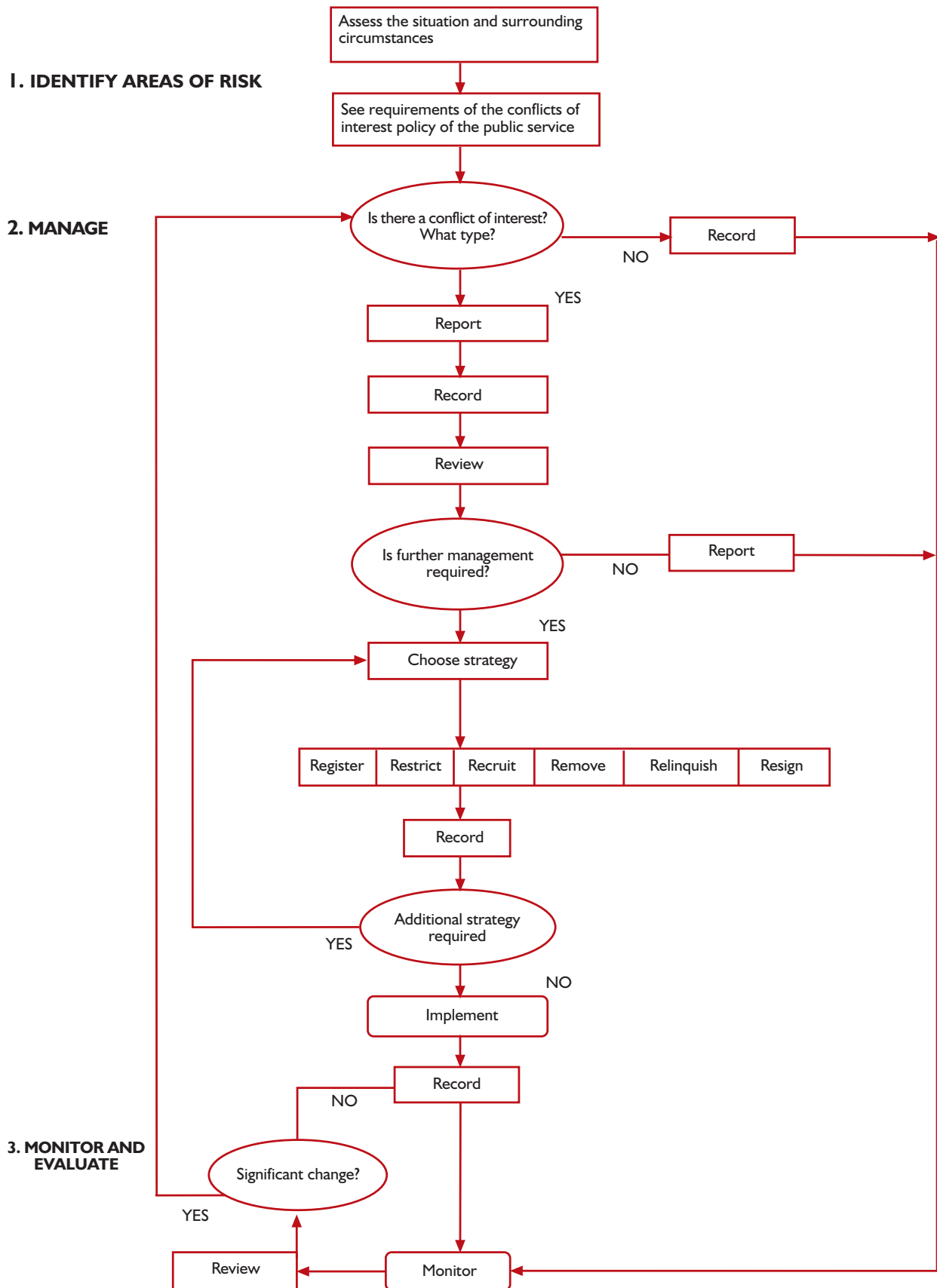
MONITORING AND EVALUATION: The effectiveness of internal strategies chosen to manage identified conflicts of interest should be constantly monitored and evaluated. A review should be capable of revealing how effective the strategy is in terms of compliance and outcome.

This can only be effective if managers and staff are consulted about their experiences in using the strategy and its procedures.

The strategy and associated procedures will need to be updated, adjusted or rewritten as necessary, to keep pace with a continuously evolving environment and to ensure that they remain relevant and effective in dealing with current and anticipated conflicts of interest.

In order to facilitate the monitoring and evaluation of the management of conflicts of interest it will be beneficial for departments to maintain a register of declared conflicts of interest. This will enable follow-up to ensure that staff members that have declared in the past do not for unforeseen reasons become involved in activities that impact on the conflict of interest as identified.

FIGURE 1: DRAFT FLOW CHART FOR MANAGING CONFLICTS OF INTEREST⁵



⁵The draft flowchart (Figure 1) for managing conflicts of interest and the guidelines was adapted from the framework as contained in the ICAC Toolkit for Managing Conflicts of Interest in the Australian Public Service.

5.2.4 PROCESS OF CONSULTATION TO BE FOLLOWED IN IMPLEMENTING THE PROPOSED CONFLICT OF INTEREST SYSTEM

In taking this report and the draft policy on managing conflicts of interest forward the PSC will consult with all relevant stakeholders. This includes all government departments, FOSAD, NACF and Cabinet.



CHAPTER 6

CONCLUSION

6. CONCLUSION

The South African public service is in an advantaged position in that two aspects of an effective conflicts of interest system i.e the Code of Conduct for public officials and the Financial Disclosure Framework for SMS members are already in place. These are known to all public officials and have become institutionalised. Regardless, however, of the existing provisions in place there is a need to ensure a comprehensive and structured approach to managing conflicts of interest.

The implementation of a policy and management framework for conflicts of interest could, however, prove to be challenging but at this stage in the evolutionary process of an integrity framework is necessary. Undoubtedly, aspects such as remunerative work outside of the public service and “cooling-off” periods as envisaged in this report would ignite debate. The proposed policy and management framework therefore attempts to strike a balance between what is expected of public officials and their personal aspirations.

The proposed policy and management framework for the management of conflicts of interest, not only implements standards to address conflicts of interest but also promotes the perception of integrity in government by preventing conflicts of interest before they occur. Our Constitution places high emphasis on the rights of citizens and the effective, efficient and economic delivery of public services. For this to prevail the general public expects of public officials to put the public interest first and it is therefore incumbent on Government to put integrity mechanisms in place so as to prevent public officials acting in their personal interest.

It is trusted that through this report, the necessary debate will be ignited to facilitate the implementation of an effective conflicts of interest system for the public service. It is recognized that there may be fundamental differences with the recommendations made and the policies proposed in the report. It is, however, incumbent on all role players to take this process forward in the interest of a transparent public service functioning on a sound integrity framework.



APPENDICES

OPTION I: DETAILED POLICY FRAMEWORK ON CONFLICTS OF INTEREST**A. INTRODUCTION**

- A.1 This conflicts of interest policy seeks to promote both the reality and perception of integrity in government by preventing conflicts of interest before they occur. As a general purpose it establishes minimum standards of ethical conduct for all public officials to help ensure that they conduct the business of government free from improper influence and conflicts of interest, whether actual or perceived. This conflicts of interest policy seeks not so much to catch the corrupt public official but rather, to guide the honest one. Recognizing that the overwhelming majority of public servants are honest, this policy focuses primarily on prevention, not punishment, and thereby seeks to promote both the reality and the perception of integrity and transparency in government.
- A.2 This policy must be read in conjunction with all other conflicts of interest rules and regulations, including the Code of Conduct and the Financial Disclosure Framework.

B. SCOPE OF THE POLICY AND COMMITMENT THERETO

- B.1 All public servants shall comply with the policy on conflicts of interest.
- B.2 Before or on assumption of duty an official is to sign a document certifying that, as a condition of service he/she will observe the conflicts of interest measures. This must be endorsed by the Head of Department. If the official is the Head of Department endorsement must be by the Executing Authority.
- B.3 A copy of the endorsed document relating to SMS members shall be submitted to the Public Service Commission.

C. DISCLOSURE OF CONFLICTS OF INTEREST**C.1 GENERAL REQUIREMENTS FOR DISCLOSURES OF CONFLICTS OF INTEREST**

- C.1.1 All public servants shall immediately when they become aware of a perceived, potential or actual conflict of interest emanating from any aspect of their employment disclose such conflict interest.
- C.1.2 Public servants below the level of the Senior Management Service must do such disclosures to their Heads of Department.
- C.1.3 Members of the Senior Management Service must disclose conflicts of interest to their Executing Authorities. Such disclosures must be forwarded to the Public Service Commission.

C.2 FINANCIAL DISCLOSURES

- C.2.1 All Members of the Senior Management Service (SMS) shall declare their financial interests in accordance with chapter 3 of the Public Service Regulations.
- C.2.2 Public servants below the level of the Senior Management Service need only declare conflicts of interest as required in paragraph C.1.2. A record of such disclosures must be kept by the relevant Heads of Department.

D. MINIMUM CONDUCT REQUIREMENTS

D.1 A public servant shall:

- D.1.1 Recuse him/herself from a decision made in the official's capacity that may result in improper gain, or give the appearance of improper personal gain.
- D.1.2 In carrying out official business make choices based on merit and in pursuance of the public interest.
- D.1.3 Except for matters that the law requires the official to keep confidential, conduct official affairs with the maximum feasible transparency and openness to public scrutiny.

D.2 A public servant may not:

- D.2.1 In making a decision in an official capacity, take into account a material benefit for himself/herself personally, or his/her family, friend or associates.
- D.2.2 In the official's private capacity enter into a transaction or otherwise act in a way that conflicts with or infringes upon the execution of his or her official duties, or appears to do so.
- D.2.3 In the official's private capacity, enter into a financial or other obligation to a private individual or organization that may influence the performance of the official's duties, or gives the appearance that it may influence that performance.
- D.2.4 Use, conceal or disclose information received in his/her official capacity in a way that unfairly discriminates in favour of himself/herself or particular individuals.
- D.2.4 Use, conceal or disclose information received in his/her official capacity in a way that unfairly discriminates in favour of himself/herself or particular individuals.
- D.2.5 Cause, try to cause, or help another official of the government to do anything that would violate any provision of this conflicts of interest policy.
- D.2.6 Ask, directly or indirectly, a subordinate to make contributions to any person, entity, or to do any political activity.
- D.2.7 Give or promise to give anything to any person or entity as compensation for being appointed to the public service or for receiving a promotion or raise.
- D.2.8 Knowingly request, negotiate for, or accept any interest, employment, or thing that would put him/her in violation of this conflicts of interest policy.

E REMUNERATED WORK OUTSIDE THE PUBLIC SERVICE

- E.1 No public servant may perform or engage himself or herself to perform remunerative work outside his or her employment in the public service, without permission granted by the relevant executing authority or an officer authorised by the said authority⁶.
- E.2 No public servant may claim any additional remuneration in respect of any official duty or work which he or she performs voluntarily or is required by a competent authority to perform⁷.

⁶ In terms of section 30(b) of the Public Service Act, 1994

⁷ In terms of section 30(c) of the Public Service Act, 1994

- E.3 A public servant may not use government letterheads, personnel, equipment, supplies, or other resources for a non-governmental purpose nor may a public servant do personal or private activities during times when he/she is required to do work for the government.
- E.4 A public servant may not have any business or financial dealings with a subordinate or superior.
- E.5 A public servant may not be a lawyer or expert against the government's interest in any lawsuit.
- E.6 A public servant may not have a job with anyone that does business with his/her department.

F GIFTS AND BENEFITS

- F.1 A gift must be declared within 30 days after receiving it to the Executing Authority.
- F.2 Gifts, hospitality or other benefits that could influence an official in his/her judgment and in the performance of official duties must be declined.
- F.3 Where there is doubt as to the appropriateness of accepting an offer of a gift, hospitality or other benefit, irrespective of its value, an official must consult with his/her Executing Authority and obtain the latter's approval to accept such offer.
- F.4 Invitations to attend special events (e.g. sporting events, performing arts etc.) are not prohibited provided that:
 - (a) attendance serve an official purpose;
 - (b) the person or a representative of the organization extending the invitation is in attendance; and
 - (c) the value is reasonable and the invitations are not frequent.
- F.5 Gifts, hospitality and other benefits are permitted if:
 - (a) received from relatives;
 - (b) received from a government or in connection with an official public event; and
 - (c) it is of a cultural nature.
- F.6 All Heads of Department must keep a register of all gifts, hospitality or benefits received by officials and the department during each financial year. This gift register must be submitted to the Public Service Commission by the end of April of each year for the preceding financial year.

G. POST EMPLOYMENT COMPLIANCE MEASURES

- G.1 Public servants should not allow themselves to be influenced in the pursuit of their official duties and responsibilities by plans for or offers of outside employment.
- G.2 A public servant shall disclose in writing to the relevant Executing Authority all firm offers of outside employment that could place him/her in a position of conflict of interest.

- G.3 A public official who accepts an offer of outside employment shall immediately disclose in writing to the relevant Executing Authority the acceptance of the offer. Where it is determined by the Executing Authority that the public official is engaged in significant official dealings with the future employer, the public official shall be assigned to other duties as soon as possible.
- G.4 A department shall not enter into contracts with a company that has employed any of its former officials for a period of a year after the relevant official left the employment of the department in a position that would involve the former official participating in the work that is required to render the service to the department.
- G.5 A former public servant shall not within a period of one year after leaving office accept service contracts, appointment to a board of directors or employment with an entity with which he/she had direct and significant official dealings during the period of one year immediately prior to his/her termination of service in public office if such entity is still in business with his/her former department.
- G.6 A former public servant may not make any representations whether for remuneration or not, for, on behalf of any other person or entity to any organization, board, commission, or tribunal with which he/she had direct and significant dealings during the period of one year immediately prior to the termination of his/her service in public office.
- G.7 At no time shall a former public official switch sides by acting for or on behalf of any person, commercial entity, association or union in connection with any specific ongoing proceeding, transaction, negotiation or case to which the government is a party and where the former public official acted for or advised the government.
- G.8 A former public servant may not give advice to their clients using information that is not available to the public concerning the programmes or policies of the departments with which he/she was employed, or with which they had a direct and substantial relationship.

OPTION 2: HOLISTIC POLICY FRAMEWORK APPROACH ON CONFLICTS OF INTEREST**A. INTRODUCTION**

- A.1 This conflicts of interest policy seeks to promote both the reality and perception of integrity in government by preventing conflicts of interest before they occur. As a general purpose it establishes minimum standards of ethical conduct for all public officials to help ensure that they conduct the business of government free from improper influence and conflicts of interest, whether actual or perceived. This conflicts of interest policy seeks not so much to catch the corrupt public official but rather, to guide the honest one. Recognizing that the overwhelming majority of public servants are honest, this policy focuses primarily on prevention, not punishment, and thereby seeks to promote both the reality and the perception of integrity and transparency in government.
- A.2 This policy must be read in conjunction with all other conflict of interest rules and regulations, including the Code of Conduct and the Financial Disclosure Framework.

B. SCOPE OF THE POLICY AND COMMITMENT THERETO

- B.1 All public servants shall comply with the policy on conflicts of interest.
- B.2 Before or on assuming of duty an official is to sign a document certifying that, as a condition of service he/she will observe the conflicts of interest measures. This must be endorsed by the Head of Department. If the official is the Head of Department endorsement must be by the Executing Authority.
- B.3 A copy of the endorsed document relating to SMS members shall be submitted to the Public Service Commission.

C. DISCLOSURE OF CONFLICTS OF INTEREST**C.1 GENERAL REQUIREMENTS FOR DISCLOSURES OF CONFLICTS OF INTEREST**

- C.1.1 All public servants shall immediately when they become aware of a perceived, potential or actual conflict of interest emanating from any aspect of their employment disclose such conflict interest.
- C.1.2 Public servants below the level of the Senior Management Service must do such disclosures to their Heads of Department.
- C.1.3 Members of the Senior Management Service must disclose conflicts of interest to their Executing Authorities. Such disclosures must be forwarded to the Public Service Commission

C.2 FINANCIAL DISCLOSURES

- C.2.1 All Members of the Senior Management Service (SMS) shall declare their financial interests in accordance with chapter 3 of the Public Service Regulations.
- C.2.2 Public servants below the level of the Senior Management Service need only declare conflicts of interest as required in paragraph C.1.2. A record of such disclosures must be kept by the relevant Heads of Department.

D. CONFLICTS OF INTEREST MEASURES

Public Servants may not:

- D.1 Use their public service position to gain any private advantage for themselves, a close family member, or anyone with whom they have a financial relationship.
- D.2 Use the public service's resources for any non- public service purpose, or disclose confidential public service information to any private person or firm.
- D.3 Accept any valuable gift from someone doing business with any public service department, without declaring such gift to the Executing Authority.
- D.4 Whilst in service, undertake remunerated work outside the public service without approval from the Executing Authority.
- D.5 Enter into any kind of private financial relationship with a superior or subordinate.
- D.6 Ask a subordinate to work on a political campaign or make a political contribution.
- D.7 Discuss possible future employment with a firm that they are currently dealing with in their public service job.
- D.8 Communicate with their former department on behalf of a private firm for one year after they leave the public service, or ever work on a matter he/she personally and substantially worked on while with the public service.

Departments may not:

- D.9 Enter into contracts with a company that has employed any of its former officials for a period of a year after the relevant official left the employment of the department.

CODE OF CONDUCT FOR THE PUBLIC SERVICE

A. PURPOSE

- A.1 In order to give practical effect to the relevant constitutional provisions relating to the Public Service, all employees are expected to comply with the Code of Conduct provided for in this Chapter.
- A.2 The Code should act as a guideline to employees as to what is expected of them from an ethical point of view, both in their individual conduct and in their relationship with others. Compliance with the Code can be expected to enhance professionalism and help to ensure confidence in the Public Service.

B INTRODUCTION

- B.1 The need exists to provide direction to employees with regard to their relationship with the legislature, political and executive office-bearers, other employees and the public and to indicate the spirit in which employees should perform their duties, what should be done to avoid conflicts of interests and what is expected of them in terms of their personal conduct in public and private life.
- B.2 Although the Code of Conduct was drafted to be as comprehensive as possible, it is not exhaustive set of rules regulating standards of conduct. However, heads of department, by virtue of their responsibility in terms of section 7(3)(b) of the Act of the efficient management and administration of their departments and the maintenance of discipline, are, inter alia, under a duty to ensure that the conduct of their employees conform to the basic values and principles governing public administration and the norms and standards prescribed by the Act. Heads of department should also ensure that their staff is acquainted with these measures, and that they accept and abide by them.
- B.3 The primary purpose of the Code is a positive one, viz. to promote exemplary conduct. Notwithstanding this, an employee shall be guilty of misconduct and may be dealt with in accordance with the relevant collective agreement if she or he contravenes any provision of the Code of Conduct or fails to comply with any provision thereof.

C. CODE OF CONDUCT

C.1 RELATIONSHIP WITH THE LEGISLATURE AND THE EXECUTIVE

An employee -

- C.1.1 is faithful to the Republic and honours the Constitution and abides thereby in the execution of his or her daily tasks;
- C.1.2 puts the public interest first in the execution of his or her duties;
- C.1.3 loyally executes the policies of the Government of the day in the performance of his or her official duties as contained in all statutory and other prescripts;

- C.1.4 strives to be familiar with and abides by all statutory and other instructions applicable to his or her conduct and duties; and
- C.1.5 co-operates with public institutions established under legislation and the Constitution in promoting the public interest.

C.2 RELATIONSHIP WITH THE PUBLIC

An employee -

- C.2.1 promotes the unity and well-being of the South African nation in performing his or her official duties;
- C.2.2 will serve the public in an unbiased and impartial manner in order to create confidence in the Public Service;
- C.2.3 is polite, helpful and reasonably accessible in his or her dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;
- C.2.4 has regard for the circumstances and concerns of the public in performing his or her official duties and in the making of decisions affecting them;
- C.2.5 is committed through timely service to the development and upliftment of all South Africans;
- C.2.6 does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;
- C.2.7 does not abuse his or her position in the Public Service to promote or prejudice the interest of any political party or interest group;
- C.2.8 respects and protects every person's dignity and his or her rights as contained in the Constitution; and
- C.2.9 recognises the public's right of access to information, excluding information that is specifically protected by law.

C.3 RELATIONSHIP AMONG EMPLOYEES

An employee -

- C.3.1 co-operates fully with other employees to advance the public interest;
- C.3.2 executes all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law;
- C.3.3 refrains from favouring relatives and friends in work-related activities and never abuses his or her authority or influences another employee, nor is influenced to abuse his or her authority;

- C.3.4 uses the appropriate channels to air his or her grievances or to direct representations;
- C.3.5 is committed to the optimal development, motivation and utilisation of his or her staff and the promotion of sound labour and interpersonal relations;
- C.3.6 deals fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and
- C.3.7 refrains from party political activities in the workplace.

C.4 PERFORMANCE OF DUTIES

An employee-

- C.4.1 strives to achieve the objectives of his or her institution cost-effectively and in the public's interest;
- C.4.2 is creative in thought and in the execution of his or her duties, seeks innovative ways to solve problems and enhances effectiveness and efficiency within the context of the law;
- C.4.3 is punctual in the execution of his or her duties;
- C.4.4 executes his or her duties in a professional and competent manner;
- C.4.5 does not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;
- C.4.6 will recuse himself or herself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee;
- C.4.7 accepts the responsibility to avail himself or herself of ongoing training and self-development throughout his or her career;
- C.4.8 is honest and accountable in dealing with public funds and uses the Public service's property and other resources effectively, efficiently, and only for authorised official purposes;
- C.4.9 promotes sound, efficient, effective, transparent and accountable administration;
- C.4.10 in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest;
- C.4.11 gives honest and impartial advice, based on all available relevant information, to higher authority when asked for assistance of this kind; and
- C.4.12 honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secret.

C.5 PERSONAL CONDUCT AND PRIVATE INTERESTS

An employee -

- C.5.1 during official duties, dresses and behaves in a manner that enhances the reputation of the Public Service;
- C.5.2 acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;
- C.5.3 an employee shall not, without prior written approval of the Head of Department obtain or accept any gifts, benefits or item of monetary value (a description and the value and source of gift with a value in excess of R350) from any person for himself or herself during the performance of duties as these may be construed as bribes;
- C.5.4 does not use or disclose any official information for personal gain or the gain of others; and
- C.5.5 does not, without approval, undertake remunerative work outside his or her official duties or use office equipment for such work.

FINANCIAL DISCLOSURE FRAMEWORK

GENERAL INFORMATION

Why the framework

Designated employees are entrusted with public funds. As such, they need to maintain the highest standards of professional ethics. Their integrity and that of their departments must be beyond question.

This framework is aimed at preventing conflict of interests by requiring of designated employees to disclose their financial interests.

Who must file

The disclosure framework is applicable to any member of the SMS. For the purpose of this framework, they are referred to as designated employees.

Where must I file the form

The original completed form must be submitted to your Executing Authority (EA). Your EA must submit a copy thereof to the Public Service Commission (PSC), at the undermentioned address, not later than 31 May of the year in question.

In the case of designated employees appointed after 1 April, the form should be submitted to the PSC not later than 30 days after it has been submitted by the designated employee to the EA.

Director-General: Office of the Public Service Commission
Directorate: Professional Ethics Promotion
Private Bag X 121
PRETORIA
0001

Who will have access to the information

Under normal circumstances only your EA, the Commission and those acting on their behalf, will have access to the information. They are required to liaise with you if they are concerned about a possible conflict of interest. Only your EA may grant a waiver if a conflict of interest is evident. Such a waiver needs to be attached to the original form.

No person who has access to the information may, except when a court so orders, disclose the information. Any person, other than a person referred to above, may only be given access to the information in terms of section 11 of the Promotion of Access to Information Act, 2000.

When must I file

A designated employee must not later than 30 April of each year, disclose to the relevant EA on the attached form particulars of all her/his registrable interests in respect of the period 1 April of the previous year to 31 March of the year in question.

Designated employees who are appointed after 1 April must make such disclosure within 30 days after assumption of duty in respect of the period of 12 months preceding her/his assumption of duty.

What happens if I do not disclose my interests

Any designated employee who fails to disclose her/his interests or willfully provides incorrect or misleading details can be charged with misconduct.

Where/how can I obtain a copy of the form

A hard copy of the form is obtainable from the Directorate: Senior Management Services (see particulars below) while an electronic copy thereof is available on-line at: www.info.gov.za/documents/forms/index.html.

INSTRUCTIONS FOR COMPLETING THE FORM

The form needs to be completed in the person's own handwriting and certified by a Commissioner of Oaths/Justice of the Peace.

By completing the form, the person is not exempted from the statutory requirements of obtaining approval for performing remunerative work outside the public service.

Where insufficient space is provided or if the form does not provide for a certain type of financial interest, the required information should be provided on a separate sheet.

QUERIES AND DIFFICULTIES

Queries in regard to this form and Chapter 3 of the Public Service Regulations may be directed to:
Directorate: Senior Management Service
Department of Public Service and Administration
Private Bag X 916
PRETORIA
0001
Tel: (012) 314 7395

INFORMATION SHEET

The following notes will guide you in completing the relevant parts of the financial disclosure form:

NOTE 1

Shares and other financial interests

Designated employees are required to disclose the following details with regard to shares and other financial interests held in any private or public company or any other corporate entity recognized by law:

- I. The number, nature and nominal value of shares of any type:
- II. The nature and value of any other financial interests held in any private or public company or any other corporate entity: and
- III. The name of that entity.

NOTE 2

Directorships and partnerships

Designated employees are required to disclose the following details with regard to directorships and partnerships:

- The name and type of business activity of the corporate entity or partnership; and
- The amount of any remuneration received for such directorship or partnerships.

Directorship includes any occupied position of director or alternate director, or by whatever name the position is designated.

Partnership is a legal relationship arising out of a contract between two or more persons with the object of making and sharing profits.

NOTE 3

Remunerated work outside the public service (All remunerated employment must be sanctioned by the official's EA required by section 30 of the Public Service Act, 1994).

Designated employees are required to disclose the following details with regard to remunerated work outside the public service.

- The type of work;
- The name and type of business activity of the employer; and
- The amount of the remuneration received for such work.

Remuneration means the receipt of benefits in cash or kind.

Work means rendering a service for which the person receives remuneration.

NOTE 4

Consultancies and retainerships

Designated employees are required to disclose the following details with regard to consultancies and retainerships:

- The nature of the consultancy or retainership of any kind;
- The name and type of business activity, of the client concerned; and
- The value of any benefits received for such consultancy or retainerships.

NOTE 5

Sponsorships

Designated employees are required to disclose the following details with regard to sponsorships:

- The source and description of direct financial sponsorship or assistance; and
- The value of the sponsorship or assistance.

NOTE 6

Gifts and hospitality from a source other than a family member

Designated employees are required to disclose the following details with regard to gifts and hospitality:

- A description and the value and source of a gift with a value in excess of R350;
- A description and the value of gifts from a single source which cumulatively exceed the value of R350 in the relevant 12 month period; and
- Hospitality intended as a gift in kind.

Designated employees must disclose any material advantage that they received from any source e.g. any discount prices or rates that are not available to the general public.

All personal gifts within the family and hospitality of a traditional or cultural nature need not be disclosed.

NOTE 7

Land and Property

Designated employees are required to disclose the following details with regard to their ownership and other interests in land and property (residential or otherwise both inside and outside the Republic):

- A description and extent of the land or property;
- The area in which it is situated; and
- The value of the interest.

LIST OF OFFICIALS AND ORGANISATIONS CONSULTED

NAME	INSTITUTION
Ms Ingeborg Russ Ms Gerlinde Jaeger	Central Anti-Corruption Office in the State of Bremen, Germany
Mr Hubertus Lueder Ms Astrid Franz Mr Gerhard Gizler Mr Jens Grote Superintendent Wolfgang Lindner	Ministry of the Interior and Sport in Hannover, State of Lower Saxony, Germany
Dr Karl-Heinz Guttmacher (Chairperson) Mr Wolfgang Finger (Secretary)	Committee on Public Petitions in the Bundestag, Berlin, Germany
Ms Birgit Laitenberger Ms Ute Vogelsang Ms Katrin Walter	Federal Ministry of the Interior, Berlin, Germany
Mr Peter Nowak	Deputy Head: Parliamentary Law Section in the Bundestag, Berlin, Germany
Mr Janos Bertok Mr Tom Willems Dr Hans-Jorg Elshorst	OECD Public Governance and Territorial Development Directorate, Berlin, Germany Office Europeen De Lutte Anti-Fraude (OLAF), Berlin, Germany President of Transparency International, Germany
Mr Kenan Tur (CEO) Ms Maren Moehring	Business-Keeper-Management-System in Potsdam, Germany
Ms Regina Puls (Compliance Commissioner) Dr Edgar Jousen (Ombudsman)	Deutsche Bahn AG, in Potsdam, Germany
Mr Eckehard Geiss Mr Michael Umbach Dr Dedo Geintz Mr Eckehard Geis Mr Michael Lau	Deutsche Gesellschaft Für Technische Zusammenarbeit (GTZ), Frankfurt, Germany
Mr Otto GeiB Dr Anette Kleinfeld Mr Hartmut Runde	Frankfurt Airport Service Worldwide (Fraport AG), Frankfurt, Germany
Mr Gerhard Budde	Anti-Corruption Department, City of Frankfurt, Germany
Mr Michael Loer Mr Hubert Hart	Public Prosecutor's Office, Frankfurt, Germany
Mr Andre Le Vasseur Mr Stephen Tsang	Office of the Ethics Commissioner, Ottawa, Canada
Ms Chantal Larocque	Public Service Commission of Canada, Ottawa, Canada
Ms Catherine MacQuarrie, Ms Linda Steever, Ms Ila Murphy, Ms Leigh Archibald, Ms Rita Flynn	Office of Public Service Values and Ethics, Ottawa, Canada (Discussion on Conflicts of Interest).
Ms Susan Hart Ms Caroline Riverin-Beaulieu	Office of Public Service Values and Ethics, Ottawa, Canada (Public Service Disclosure Protection Act).
Ms Laura Pettigrew, Ms Gail Scala Mr Gareth Jones, Ms Barbara Finlay	Office of the Ombudsman of Ontario, Toronto, Canada.

LIST OF REFERENCES

I. PUBLICATIONS

Citizenship and Immigration Canada: *A Guide to the Acceptance of Gifts, Hospitality and Benefits*, Ottawa, 2004.

Davies, Mark: *A Practical Approach to Establishing and Maintaining A Values-Based Conflicts of Interest Compliance System*: Paper delivered at the IV Global Forum on fighting Corruption, held in Brasilia June 7 – 10, 2005.

Department of Public Service and Administration: *Financial Disclosure of Members of the Senior Management Service*: Government Gazette No. 22308 of 25 May 2001.

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Lantermann, Klaus: *Facts About Germany*: GCP Media GmbH, Germany, 2003.

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Organization for Economic Co-operation and Development: *Managing Conflicts of Interest in the Public Service (Policy Brief)*: 2005: Paris.

Public Service Commission: *Explanatory Manual on the Code of Conduct for the Public Service*: South Africa, 2002.

Treasury Board of Canada Secretariat: *Values and Ethics Code for the Public Service*: Ottawa, 2003.

2. ACTS

Australian Public Service Act, 1999 (Section on Australian Public Service Values and Australian Code of Conduct is found in this Act).

Constitution of the Republic of South Africa, Act No. 108 of 1996. (South Africa).

Public Finance Management Act, Act No. 1 of 1999. (South Africa).

Protected Disclosure Act, Act No. 26 of 2000. (South Africa).

Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004. (South Africa).

Public Service Commission Act, No. 46 of 1997 (South Africa).

Public Service Act, 1994 (South Africa).

GLOSSARY OF ABBREVIATIONS

APS	Australian Public Service
CIDA	Canadian International Development Agency
FDF	Financial Disclosure Framework
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
ICAC	Independent Commission Against Corruption
NACF	National Anti-Corruption Forum
OPSC	Office of the Public Service Commission
PSC	Public Service Commission
SMS	Senior Management Service

PUBLIC SERVICE COMMISSION REGIONAL OFFICES

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