
GUIDELINES ON CONFLICT OF INTEREST



March 2023

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I. INTRODUCTION

In the very foreword of the **MRA Code of Conduct and Ethics** (the 'CCE'), it is stated that the CCE bears testimony to the MRA's commitment to building a culture of integrity within its organizational framework, work systems and processes.

It is also stated therein that having a code is not enough. The Code must be implemented, enforced and regularly reviewed to ensure relevance and effectiveness.

In the same spirit, the present Guideline on Conflict of Interest (hereinafter the 'Guideline') seeks to offer practical guidance to some of the rules contained in the CCE and the relevant laws which pertain to conflict of interest so as to facilitate an effective implementation of the CCE and to ensure the compliance by all officers and/or members of the MRA to the laws governing conflict of interests.

II. SCOPE OF APPLICATION

The present Guideline shall apply to all officers of the MRA in the discharge of their respective duties and shall relate to:

- a. the use of any power, authority or discretion conferred under any of the Revenue Laws by such officers and/or members;
- b. any decision making processes within the MRA; and
- c. any other situation/circumstance which may compromise the integrity of officers.



INTEGRITY

III. DEFINITIONS

Associate	<p>"associate", in relation to a person, means -</p> <ul style="list-style-type: none"> a. person who is a nominee or an employee of that person; b. a person who manages the affairs of that person; c. a firm of which that person, or his nominee, is a partner or a person in charge or in control of its business or affairs; d. a company in which that person, or his nominee, is a director or is in charge or in control of its business or affairs, or in which that person, alone or together with his nominee, holds a controlling interest, or shares amounting to more than 30 per cent of the total issued share capital; or e. the trustee of a trust, where - <ul style="list-style-type: none"> i. the trust has been created by that person; or ii. the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than 20 per cent of the total value of the assets of the trust.
CCE	MRA Code of Conduct and Ethics published in August 2014
ICAC	Independent Commission Against Corruption
Member	Member of the Revenue Board as constituted under Section 5 of the Mauritius Revenue Authority Act 2004
MRA	Mauritius Revenue Authority as established under Section 3 of the Mauritius Revenue Authority Act 2004
Officer	<p>Means a person who is part of the management team and any other person employed by the MRA to perform duties of an administrative or technical nature; and</p> <p>Includes a law practitioner or other person having a legal qualification employed by the MRA</p>
Relative	<p>"relative", in relation to a person, means -</p> <ul style="list-style-type: none"> a. a spouse or conjugal partner of that person; b. a brother or sister of that person; c. a brother or sister of the spouse of that person; or d. any lineal ascendant or descendant of that person;

IV. WHAT IS CONFLICT OF INTEREST

i. Legal Framework

Under the laws of Mauritius, more precisely, Section 13 of the Prevention of Corruption Act 2002 ('POCA 2002'), it is provided that:

Where-

1. (a) a public body in which a public official is a member, director or employee proposes to deal with a company, partnership or other undertaking in which that public official or a relative or associate of his has a direct or indirect interest; and
(b) that public official and/or his relative or associate hold more than 10 per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking, that public official shall forthwith disclose, in writing, to that public body the nature of such interest.
2. Where a public official or a relative or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision.
3. Any public official who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

To the extent that the POCA 2002 defines the term 'public official' as including employees or members of statutory corporations, members and/or officers of the MRA would come under the purview of Section 13 POCA 2002.

According to the Managing Conflict of Interests Handbook published by the ICAC in October 2014 (which is available for consultation on the website of the ICAC), there are two key factors in a situation of conflict of interests:

- a. Private Interest of the public official or his relative or associate; and
- b. Conflict between private and public interests.

The onus/obligation resting on a public official when faced with a situation of conflict of interest is two-fold. In the first instance, such conflict of interest must be disclosed in writing by the public official forthwith. Secondly, the public official must not vote or take part in any proceedings relating to such decision.

ii. MRA CCE

In the specific context of the MRA, the MRA CCE specifically provides that *Conflict of interest is a situation in which an employee, for his personal gain or the benefit of others, attempts to promote a private or personal interest.*

The CCE provides at its paragraph 6.6. that:

Officers of the MRA must avoid furthering private interests directly or indirectly. A private interest is furthered when an employee furthers his own interest by:

- i. not taking action when he is required to,
- ii. making or participating in making a decision when he is not required to. Furthering a private interest indirectly may arise when the employee furthers the interest of a relative, close associate or other person with whom the employee has a special relationship.

Private interests may be pecuniary or non-pecuniary (advantages, rewards or gains). Pecuniary interests include actual, potential or perceived financial gains or losses. On the other hand non-pecuniary interests include a tendency towards favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.

The CCE provides further at its paragraph 6.7 that situation of conflict of interest can be:

- **Actual** - occurs when an employee is in a position to be influenced by his private or personal interests when exercising his duties;
- **Perceived** - occurs when an employee is in a position which appears to be influenced by his personal or private interests when exercising his duties; or
- **Potential** - occurs when an employee is in a position where he may be influenced when exercising his duties in the future by his private or personal interests.

iii. MRA Code of Ethics for Board Members

In addition to the provisions of Section 5 (5) (a) of the MRA Act, **Section 3 of the Code of Ethics for MRA's Board Members** caters for any situation of conflict of interest and provides that disclosure should be made and that the Board member should not participate in related discussions and decision making.

V. MANAGING CONFLICT OF INTEREST WITHIN THE MRA

To effectively mitigate the organisation's risk, one must understand and manage the entire scope of disclosures, which goes beyond the disclosure of Conflict of Interest and includes gifts, travel, entertainment, lobbying, and anti-boycott.

The onus to make a timely, full and appropriate disclosure of any actual or potential conflict of interests lies with the relevant Officer and/or Member.

i. Procedure for Disclosure

An Officer who suspects or believes that a situation of conflict of interest may arise in the execution of a particular task requiring the making of a decision by that Officer must declare such conflict forthwith to his immediate supervisor through the Disclosure of Conflict of Interest Form at Appendix II of the CCE, which is herewith annexed for ease of reference.

ii. MRA conflict of interest framework

As part of the MRA's integrity management system, the MRA has also established a formal and documented framework, by way of circulars, manuals and statements relating to the handling of disclosure of conflict of interest- including but not limited to the following documents, as they may from time to time be amended:

- a. **'Circular No. 3 of 2009' titled 'Conflict of Interest' (Annex I)** was issued to all staff with the aim to draw staffs' attention on paragraph 6.6 of the Code of Conduct and Ethics.
- b. The revised **Code of Conduct and Ethics 2014** has, at its paragraphs 6.7 and 6.8 made provisions for the nature and disclosure of conflict of interest which is in line with Section 13 of the Prevention of Corruption Act (POCA) 2002. Focus was made on the compliance of Section 13 of the POCA as per the **Declaration of Conflict of Interest Form (Appendix II of the Code of Conduct and Ethics)**.
- c. Furthermore, **Section 4 of the Prevention of Malpractice Manual** provides that officers of the Internal Affairs Division (IAF) are duty bound to disclose to the Director in a timely fashion any actual or potential conflict of interest he or she may have in an investigation in which he or she is to participate.
- d. In December 2014, the Director, Internal Affairs Division issued an **Office Circular No.6 of 2014** with caption 'Managing Conflict of Interests' attaching ICAC handbook on the said title to the attention of all MRA staff.
- e. On 19 July 2018, the DG issued a **circular in relation to e-Auctions**, reminding the MRA staff that in order to avoid conflict of interest, whether real or perceived, MRA Officers should refrain from submitting bids.

- f. **MRA's Integrity Policy Statement 2013** has provided guidance to our stakeholders for the obligation to ensure that they will never misuse their authority or position or status for his personal gain and interest or the interest of those connected to him when dealing with the MRA. Stakeholders are also expected to give assurance that they will disclose to the MRA any situation of conflict of interests or situation that may be seen by others to affect impartiality in decision making by the MRA.

The above established framework demonstrates the MRA's commitment to prevent conflict of interest by identifying and establishing proper and extensive mechanisms for the disclosure of Conflict of Interest, the proper recording of such Conflict of interest and the monitoring and corrective actions resulting from such disclosed interest

VI. SANCTION FOR NON-DISCLOSURE

The **Disciplinary Code in the Human Resources Management Manual** provides clearly that **non-declaration of conflict of interest** is categorized as a Gross Misconduct.

Officers of the MRA may therefore face disciplinary proceedings for failing to disclose conflict of interest.

In addition to the above, and to the extent that non-disclosure of conflict of interest is made an offence under Section 13 of POCA, any person may, on conviction, be liable to penal servitude for a term not exceeding 10 years.



VII. CASE STUDIES

The following case studies illustrate situations which may give rise to conflict of interests:

1

Case Study No. 1

The MRA is conducting an audit into the tax affairs of XYZ Ltd. The audit is being conducted by officers of the FID and is led by Team Leader Mr. David. Mrs. Jane is part of the team conducting the audit.

Jane owns 10% shares in XYZ Ltd whilst her husband holds 20% of the shares. Jane does not disclose any conflict of interest to her superiors and participates in the audit exercise.

Jane, being a public official, is bound to disclose forthwith any conflict of interest and to refrain from participation in any proceedings relating to XYZ Ltd. On the assumption of prior guilty knowledge of such fact and to the extent that, when taken together the shares held by her and/or her husband amount to more than 10% of the total issued share capital of XYZ Ltd, Jane's failure to disclose her interest and her participation in the audit process is a situation of conflict of interest.

2

Case Study No. 2

Mr. Vinod, Member of the MRA Board formed part of the Interview Panel for the post of Team Leader in a Compliance Department. A list of interviewees is circulated to all members of the Interview Panel in advance. Mr. Dev, the brother of his wife, is one the applicants and was selected for the interview. Mr. Vinod fails to disclose his relationship with Mr. Dev to the other panelists and he participates in the interview process. Mr. Dev is not ultimately selected for the advertised post.

Mr. Vinod, being a member of a statutory body, is bound to disclose his conflict of interest and to refrain from participating in the interview process. To the extent that Mr. Vinod is aware, prior to the interview process that his relative will be part of the process and that he fails to disclose his relationship and to refrain from participation in the interview process, this amounts to a situation of conflict. The fact that Mr. Dev is not ultimately selected for the advertised post is not a relevant consideration in the determination of whether Mr. Vinod was conflicted.

Case Study No. 3

Officer Dana participates in the procurement process with respect to cleaning services for the MRA. Her nephew is the majority shareholder and director of Metprop Co. Ltd engaged in cleaning services.

Officer Dana is involved in the development and approval of specifications for the tender and is also forms part of the bid evaluation committee. Metprop Co. Ltd is one of the bidders and its bid has been submitted to the bid evaluation committee for consideration.

Officer Dana verbally informs her superior of her relationship to the shareholder and director of Metprop Co. Ltd but maintains that the latter is only a distant relation and this will not be a problem. She participates in the bid evaluation committee and Metprop Co. Ltd is eventually selected as the service provider.

Although the nephew of Officer Dana would not be a lineal descendent as envisaged under the POCA, the situation described above would nevertheless come under the purview of disclosures warranted under the MRA CCE.

Case Study No. 4

Team Leader Jack directed a passenger in the Red Channel at the SSRIA Arrival Hall to have his luggage examined at the customs counter where Technical Officer Tim was on duty. Technical Officer Tim is the brother in law of the passenger. Technical Officer Tim discloses his relationship with the passenger and states that he will not participate in the examination of the luggage.

Examination of the passenger's luggage is done by Team Leader Jack and another officer. Technical Officer Tim stays at the customs counter during the examination process and is seen conferring both with the passenger and Team Leader Jack during the examination. Nothing incriminating is found in the passenger's luggage.

Whilst the interest of Technical Officer Tim is duly disclosed and there is no participation by the latter in the actual examination of the passenger's luggage, Technical Officer Tim should not have stayed at the customs counter. Necessary action ought to have been taken so that there is no perception of conflict of interest or bias during the examination of the passenger's luggage.

VIII. CONCLUSION

Undisclosed and unmanaged situations of conflict of interest undermine fairness, meritocracy and ultimately erode the public organisation's credibility and reputation. It is therefore important for each of the Officers and Members of the MRA to take accountability and to ensure that their duties are carried out in compliance with the legal provisions pertaining to conflict of interest and to the highest ethical standard.

Whilst the MRA has strived to set up and maintain a recorded system of managing conflict of interests, Officers and Members of the MRA must keep in mind that ultimately the onus for disclosing in a timely, complete manner any situation of conflict and to effectively manage such conflict by abstinence, self-exclusion and non-participation, rests on them.

Officers and Members of the MRA must therefore ensure that they are alive to the requirements of the laws relating to conflict of interest and are in a position to immediately and effectively identify and manage any actual, potential or perceived situation of conflict of interest.

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Disclaimer:

The information contained in the Guideline below aims to provide a general understanding of an Officer and/or Member's obligations under the legislative framework regulating conflict of interests and corruption in general as well as the reporting obligations contained in the specific context of employment and/or membership within the MRA. The present Guideline does not include all possible situations of conflict of interest and does not, in any manner whatsoever supersede or substitute itself with the relevant legal provisions relating to conflict of interest or any advice tendered by a law practitioner.

Whilst every effort has been made to ensure that this information is consistent with existing law and practice, the MRA shall not be responsible or held accountable in any way for any damage, loss or expense whatsoever, arising directly or indirectly from any inaccuracy or incompleteness in the Contents of this Guideline, or errors or omissions in the transmission of the Contents. The MRA shall not be responsible or held accountable in any way for any decision made or action taken by you or any third party in reliance upon the Contents in this Guideline. Every Member and/or Officer is advised to consult the relevant legislative provisions and to seek appropriate advice in the event of doubt in relation to Conflict of Interest.


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Annex I

Circular No. 3 of 2009' - 'Conflict of Interest'

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MAURITIUS REVENUE AUTHORITY

Circular No. 3 of 2009

To: All Staff

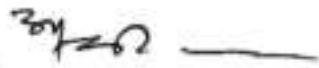
CONFLICT OF INTEREST

Attention of all staff members is drawn to paragraph 6.6 of the Code of Conduct and Ethics (which has already been circulated) which inter alia reads as under:

"A conflict of interest is a situation in which an employee, for his personal gain or the benefit of others, attempts to promote a private or personal interest. Private interest includes any kind of advantage for ourselves, our family, relatives, friends, partnership and other legal entities in which we have a direct or indirect interest. To be seen as professional, fair and independent we should disclose all such situations through the appropriate channel as soon as a situation of conflict of interest arises."

2. It has however been observed that the conditions laid down above have either not been fully understood or not being followed properly. It is hereby reiterated that every employee should refrain from making any decision or be a part in the decision making process in any matter which involves private or personal interest. For an example the audit and assessment may not be raised by any employee in respect of the employee himself/herself or his/her family members or relatives. Similarly, Customs Officers may not examine, appraise or assess goods/cargo of his/her family members or relatives. In case of procurement the employees should refrain from evaluating and awarding any bid or contract in situations which involve any private or personal interest. These examples are illustrative but not exhaustive.

3. All the staff members are therefore reminded to refrain from making any decision or be a part of decision making process in case there is a conflict of interest. They are also required to declare any conflict of interest to their superior beforehand so that the assignment is assigned to some other officer.


M. S. Lal
Director General
22 September 2009

Annex II

Disclosure of Conflict of Interest Form

Declaration of Conflict of Interest Form	
Name of declarant:.....	
Rank:.....	
Department/Division:.....	
Posting (Section/Unit):.....	
Task assigned/New posting* :..... (Tax/ VAT /PAYE audit, examination of consignment, Committee Member, Other**)	
<i>*Delete as appropriate</i>	
<i>**Give a brief description of work to be performed to carry out the task</i>	
Name of related entity (where applicable):.....	
Nature of conflict of interest (brief description):.....	
Declaration: I,....., the undersigned, hereby declare a conflict of interest (as described above) to undertake the present task assigned to me and move for its reassignment to an appropriate officer.	
Certification: The above declaration is accurate and has been done to the best of my knowledge. I make this statement in good faith and further aver that I am aware of the legal and administrative consequences of any false or incorrect information given by me.	
Signature:.....	Date:.....

<i>To be filled in by supervisor</i>	
Task reassigned to: Mr/Mrs.....	
<i>*Reasons:.....</i>	
<i>*The supervisor should provide reasons and conditions to be satisfied (where applicable) where the task is reassigned to the declarant himself.</i>	
Name:.....	
Rank:.....	
Department/Division:.....	
Posting (Section/Unit):.....	
Signature:.....	Date:.....



Ehram Court, Cnr Mgr. Gonin & Sir Virgil Naz Streets, Port-Louis, Mauritius
T: +230 207 6000 | F: +230 211 8099 | E: headoffice@mra.mu | W: www.mra.mu

