



## CONFLICT OF INTEREST POLICY

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## TERMS AND DEFINITIONS

Throughout this document, unless otherwise stated, the terms and expressions stated below have the meanings hereinafter assigned to them as:

<b>Benefit</b>	Any tangible or intangible advantages or profits gained
<b>CEO</b>	Chief Executive Officer
<b>COI</b>	Conflict of Interest: any conflict between TCTA's interests and the direct or indirect private interests of a TCTA employee (or close relatives), which could improperly influence, or be perceived to influence, the objective and effective performance of their official duties and responsibilities. In simpler terms, COI occurs where actual or perceived employees' personal/private interests could improperly influence the performance of their duties.
<b>Connected party</b>	A party related to the employee, including a family member, a trust in which the employee's family member is a trustee or beneficiary, a close corporation or company where the employee is a member, shareholder or their family member is an employee, director, member, shareholder or a representative of such legal entity.
<b>Corruption</b>	<p>An act of directly or indirectly accepting or agreeing to accept any gratification from another person; giving or agreeing to give any other person any gratification to influence that person directly or indirectly to exercise his powers, duties or legal obligations in a manner which is/amounts to:</p> <ul style="list-style-type: none"><li>○ Illegal, dishonest, unauthorised, incomplete, or biased.</li><li>○ Misuse or selling of information or material acquired.</li><li>○ Abuse of position of authority.</li><li>○ Breach of trust.</li><li>○ Violation of a legal duty or set of rules.</li><li>○ Designed to achieve an unjustified result or advantage; and</li><li>○ Any other unauthorised or improper inducement to do or not to do anything.</li></ul>
<b>Employee</b>	Defined by the Labour Relations Act 66 of 1995 as amended: any person, excluding an independent contractor, who works for TCTA and who receives, or is entitled to receive, any remuneration; and any other person who in any manner assists in carrying on or conducting the business of TCTA, and 'employed' and 'employment' have meanings corresponding to that of 'employee'.

<b>Enduring conflict</b>	It is a conflict due to a close relationship or a close association or acquaintance between two or more people that may hinder objectivity or fair judgement of an employee.
<b>Family member / relative / friend</b>	Includes a spouse, siblings, parents, children, blood relative or other members of a personal household, extended family (e.g., in-laws etc.) and friends
<b>Gift and/or Benefit</b>	Anything including items, goods, services, information or money in whatever form from which the recipient may derive a benefit, as well as any other gratuity. Gifts include, but are not limited to, the following: cash, gratuity, free accommodation, free fully paid holidays, gift vouchers, general gifts such as flowers, wine, chocolate, corporate merchandise and promotional products, souvenirs, entertainment, etc. Gifts are considered to have been given or received by the TCTA employee if they are given or received by any of the following: (a) the employee, (b) any family member or relative of the employee, including, but not limited to, payments to or by, or employment of, any such family member or relative; and (c) any other person or entity at the employee's direction or for the employee's benefit.
<b>Gratuity</b>	any sum of money paid in respect of any defined task or project other than the contracted remuneration paid by TCTA.
<b>HCSEC</b>	the Human Capital, Social and Ethics Committee of the Board.
<b>Private Work</b>	any work or activity performed by employees for gain outside their employment contract with TCTA while in its employ.
<b>Management/ Manager</b>	Executives, heads of departments and senior managers or the second-tier management of TCTA;
<b>Material Financial Interest</b>	a financial interest of any kind, which, in view of all the circumstances, is substantial enough that it would, or reasonably could, affect the employee or family member's judgment with respect to transactions to which TCTA is a party. This includes all forms of compensation.
<b>Service provider/ supplier</b>	a supplier, tenderer, contractor, funder and counterparty and any individual doing business with TCTA
<b>Stakeholders</b>	shareholder, employees, creditors (service provider/suppliers) and clients of TCTA
<b>TCTA / Employer</b>	Trans-Caledon Tunnel Authority

## 1. OVERVIEW

Conflict of interest (COI) can arise for employees at all levels of seniority and in every area of work in the organisation. They are an inevitable fact of organisational life and are not in themselves a sign of wrongdoing, but they create risks that should be identified and managed. However, when these risks are not appropriately addressed, organisational performance and reputation can be seriously compromised, and the effects can be significant for TCTA and the individuals concerned.

This Policy outlines the obligations of all employees to identify, report and address conflicts of interest (COIs) and to subject them to ongoing monitoring. The Policy also identifies the role of managers in taking steps to address the risks of COI to their staff.

The Guide and Toolkit attached to this Policy includes practical resources to assist employees and managers in identifying, managing, and monitoring COIs.

All employees must declare or update their COI declarations in accordance with the agreed steps to avoid or manage COI annually. A Declaration of COI form available on the intranet is to be used.

## 2. PURPOSE OF POLICY

This Policy enables TCTA to manage COI risks effectively by outlining the following:

- the principles which inform the responsible management of COI risks in TCTA;
- the responsibilities of all TCTA employees for the management of COI risks;
- the steps employees can take to manage COI risks; and
- key resources available to assist employees in meeting their responsibilities for managing COI risks.

## 3. POLICY STATEMENT

3.1 TCTA requires that employees and stakeholders maintain high ethical standards in all their business dealings. In performing their duties, all TCTA employees must avoid incidents that will result in them being conflicted or perceived to be conflicted, and in all dealings, they must act in the organisation's best interest.

The following four principles underpin TCTA's management of the risks of COI:

- Protecting the public interest through upholding TCTA values;
- Supporting transparency and accountability;
- Promoting individual responsibility for integrity and impartiality; and
- Developing an organisational culture that encourages effective management of COI.

#### **4. SCOPE**

- 4.1. This Policy applies to all TCTA employees uniformly, without exception, whether employed as permanent, temporary or under a fixed-term contract and all other stakeholders whose business interests have a potential COI.

#### **5. REGULATORY**

- 5.1 This Policy relates to and must be read with the following policies and procedures:

- 5.2.1 TCTA Social and Ethics Framework;
- 5.2.2 TCTA Code of Business Conduct and Ethics;
- 5.2.3 TCTA Disciplinary Policy and Procedure;
- 5.2.4 Fraud Prevention Plan; and
- 5.2.5 FICA Policy.

#### **6. CONFLICT OF INTEREST**

- 6.1 Conflict of interest arises when an employee's public duty is influenced or can be influenced by private interests. Private interests include financial and non-financial interests and can include the interests of family members and close friends or associates. They can be positive or negative interests—personal enmity towards someone can be just as relevant as loyalty to them.
- 6.2 The public duty of all employees of TCTA includes the obligation to perform all duties in accordance with TCTA values, which include accountability, integrity and impartiality. A conflict arises if a private interest might undermine an employee's ability to perform a particular role according to these values, whether the outcome of the task or function is affected; an employee's benevolent intention does not mean that risks of perceived COI can go unaddressed.
- 6.3 While COI can lead to corruption and fraud, it mostly arises innocently and independently of any fraudulent intent and should be managed with this in mind—with transparency, consistency and without favouritism or exception.
- 6.4 COI can be actual, potential, or perceived. A potential COI refers to circumstances where it is foreseeable that a COI may arise, and steps can be taken now to mitigate any risk. A perceived COI arises where a reasonable person might think that a private interest could unduly influence an employee, even if the employee is confident of their objectivity.
- 6.5 Employees need to address risks of perceived COI because they are the most likely to be overlooked or underestimated.
- 6.6 When identifying and managing COI, an important consideration is whether reasonable and fair-minded people would consider that private interest is likely to influence public duty to the extent that it would create a risk for the organisation or undermine TCTA values. Being able

to identify these risks will assist employees and managers in taking appropriate steps to protect the public interest.

6.7 Because COI is inherently subjective and personal, individuals can be prone to underestimating or misrepresenting the extent of the influence a private interest might have. It is, therefore, critical that managers are involved in assisting employees in assessing and addressing risks associated with COI.

6.8 Poor management of COI can have a serious effect on TCTA, including:

- Poor substantive outcomes arising from decisions in which merit is compromised;
- Loss of stakeholder confidence and the erosion of proper processes;
- Considerable expense and loss of efficiency to remedy actions which are tainted by undisclosed or improperly managed COI;
- Loss of employee trust in management; and
- Loss of public confidence in TCTA.

## 7. **CONFLICT OF INTEREST EXAMPLES**

Although not exhaustive, employees must refrain from the following, which TCTA deems likely to result in conflicts of interest. These are just the examples of conflict of interest that may exist and which will be regarded as breaches of this Policy:

7.1 **Close relationships and or associations** where an enduring conflict exist with people or entities with which TCTA has professional working relationships, which may or may not lead to decision-making that required the application of judgement.

7.2 **Close relationships and or associations** where an enduring conflict exist which include family members, friends, acquaintances, and associations. Examples include common private club memberships such as leisure, sports or investment clubs, joint property ownership or movements etc.

7.3 **Close relations and or association** required the employee to recuse him / her / they from any and all TCTA activities and related decision being made. If unsure, seek guidance from the TCTA Ethics Officer and Line/ Executive Manager.

7.4 In situations where the conflict of interest continues between employees and other entities, the impacted employees may have to reconsider to renounce one of the competing interests. TCTA interest must be protected at all times and if the continued presence of a conflicted employee poses a risk for the organisation amicable termination of the relationship will be considered as a risk mitigating action. The Line Executive and the employee will need to conduct and record details of the assessment of the enduring conflict and conclusion

7.5 **Activities that compete significantly for resources** such as time and working facilities. This could include non-TCTA work (for gain or not for gain), positions and membership

outside TCTA (for example, directorships, trusteeships or public office). Employees may not be engaged in any other capacity without TCTA's prior written consent from the Line Executive and Ethics Office. If a potential candidate that TCTA is engaging is contracted somewhere else for any remunerative private work or activities, TCTA shall ensure that the candidate is aware of the obligations of this policy. The

- 7.6 **Any direct or indirect provision of services or goods to TCTA by a TCTA employee on a commercial basis** (for example, additional compensation and in excess of their normal duties) is regarded as a significant conflict of interest. As such, no TCTA employee themselves or with family members, partners, business associates or other employees will be allowed to be a supplier of goods and services to the organisation.
- 7.7 **Holding investments or financial interests, directly or indirectly**, in a business contracting or seeking to do business with TCTA.
- 7.8 **Undue privilege** derived by TCTA employees, family members or close friends due to being a party to valuable information, receiving or giving gifts or entertainment that might place employees under an obligation to reciprocate, or being offered business or other opportunities.

## **8. PRINCIPLES OF MANAGING THE RISK OF COI**

- 8.1 Risks of COI are typically significant in relation to two types of activity:
- i. Recruitment, Selection and Succession; and
  - ii. Procurement (tendering, purchasing, contracting).
- 8.2 Other areas of high risk include service provider and/or contractor management, other work (external employment), receiving gifts, benefits or hospitality, complaints management and disciplinary processes, and managing private/public partnerships. Employees undertake some of these functions regularly and must be aware of the risks. Activities with a high COI risk should be considered and scrutinised systematically. It is recommended that divisions undertake assessments of COI risk in relation to relevant roles and duties and, where appropriate, include them in their divisional risk registers. The TCTA COI Toolkit includes Checklists and COI Best Practice Case Studies, which may assist in these processes.
- 8.3 The ability to prevent or effectively deal with COI is essential to good governance. Inadequate management of COI will have the potential to weaken public perception and trust in TCTA. COI management needs to be addressed to enhance the levels of objectivity and independence in TCTA.

## **9. SERVICE PROVIDERS, CONTRACTORS AND EXTERNAL PARTIES**

TCTA expects any party with which it partners, contract or engages to comply with responsible practices in relation to managing COI. Where possible, this expectation should



be incorporated into the instruments that determine or influence mutual expectations, such as memoranda of understanding and contracts for services.

## **10. IDENTIFYING CONFLICT OF INTEREST**

### **10.1 Self-assessment to be conducted by employees to determine if a conflict of interest exists or could be perceived to exist**

In taking the responsibility of identifying conflict of interest, employees should consider asking themselves the following questions, amongst others:

- 10.1.1 Do I, my relative, friend or associate stand to gain/lose financially from TCTA's decision or action on this matter/transaction?
- 10.1.2 Do I, my relative, friend or associate stand to gain/lose in any way from TCTA's decision/action?
- 10.1.3 Can I influence decision-making about a matter related to a potential private interest?
- 10.1.4 Have I made any promises or commitments in relation to the matter?
- 10.1.5 Have I received a benefit or hospitality from someone who stands to lose/gain from the TCTA's decision/action?
- 10.1.6 Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals who stand to lose/gain from TCTA's consideration of the matter?
- 10.1.7 Could there be benefits for me in the future that could cast doubt on my objectivity?
- 10.1.8 If I participate in assessment or decision-making, would I be happy for my colleagues and the public to be aware of any association or connection?
- 10.1.9 Would a fair and reasonable person perceive that a personal interest influenced me in performing my public duty?
- 10.1.10 Do I need to seek advice/discuss the matter with an objective party?
- 10.1.11 Am I confident of my ability to act impartially and in the public interest?
- 10.1.12 Do I need to declare a matter to my line manager?

## **11. OBLIGATION TO INCORPORATE COI MANAGEMENT IN SPECIFIC PROCESSES**

The management of COI, in accordance with this Policy, should be incorporated into the following business processes within the organisation:

- i. Recruitment selection ;
- ii. Procurement of goods or services; and
- iii. All internal committees.

This obligation rests with those responsible for the relevant process. The management of COI in the work of those responsible for these business processes should include the following steps:

- i) An assessment of risks of COI to be incorporated into the Committees' terms of reference;
- ii) Reporting and management of members' COI to be a standing agenda item at each meeting; and
- iii) Steps taken to manage all reported COI to be recorded in the Committee's proceedings.

## 12. PROCESS FOR MANAGING RISKS OF COI

Responsible management of the risks of COI involves three steps:

- a. Assessment
- b. Risk management
- c. Monitoring

Fig 1 – Conflict of interest wheel



### Stage 1 – Assessment: identify COI.

- i. Scrutinise private interests and public duties to identify actual, potential, or perceived COI. Use relevant checklists or guidelines established for activities or those available in the COI Toolkit.

- ii. Compliance and Ethics Office can be consulted for advice.

### **Stage 2 – Risk management: report and address the risks of identified COI.**

- i. Report identified COI (actual, potential, or perceived) to Compliance and Ethics Office.
- ii. Assess the risks to the public interest arising from any identified conflict. Consider risks to stakeholder confidence, public confidence: TCTA, TCTA Code of Business Conduct and Ethics.
- iii. Take reasonable steps to address the risks of identified COI to protect the public interest. These steps may include the following:
  - a. Register the details of the actual, potential, or perceived COI • Restrict the employee’s involvement in the public duty subject to the conflict;
  - b. Recruit a disinterested third party to oversee part or all the public duty;
  - c. Remove the employee from all responsibilities in relation to public duty;
  - d. The employee relinquishes the private interest;
  - e. The employee resigns their public office temporarily or permanently;
  - f. Record your COI declaration and any decisions in relation to the management of COI (including decisions not to take any action). All employees are required to record COI declarations and management plans in the Declaration of COI form on SharePoint; and
  - g. Maintain confidentiality in managing private information obtained in the assessment and management of COI.

### **Stage 3 – Monitoring**

The identification and management of COI should be subject to regular review—periodically and in response to any changes in circumstances (such as changes in line management).

## **13. GIVING AND RECEIVING OF GIFTS AND ENTERTAINMENT**

All gifts, entertainment and hospitality must be declared.

- 13.1 Efficient business transactions and decision-making require objectivity. Therefore, employees must not give or accept gifts, entertainment or any other personal benefit or privilege that could influence, or appear to influence, their objectivity in carrying out their duties in the organisation’s best interest.
- 13.2 The exchange of gifts and entertainment is not inherently unethical. It can be an effective way to build goodwill in business relationships. However, some gifts and entertainment can exert improper influence if they are, or can be seen to be, undue attempts to influence decisions

and behaviour or bribes. Such circumstances may harm TCTA's reputation for fair dealings and even break the law. Any gift or entertainment with the potential or intention to influence objectivity regarding business judgment and decisions is deemed to present a COI.

- 13.3 TCTA's policy distinguishes between appropriate and inappropriate giving and receiving of gifts and entertainment. What is deemed reasonable and appropriate cannot be quantified or specified exclusively, as it will differ according to different contexts and situations. Every employee is expected to exercise sound judgment regarding giving or receiving gifts and entertainment and is responsible for defending their decision. If uncertain, the employee must seek advice from their line manager or Compliance and Ethics Office in making a final decision.
- 13.4 Although there may be exceptions for business relationship building, in general, employees should not offer anything of value to external parties, whether directly or indirectly. An example of an exception for business relationship building includes bona fide hospitality and relevant equipment (for example, personal protective equipment or general stationery) during site visits, conferences, exhibitions or meetings, materials donated for educational or community development purposes which are reasonable and can in no way be construed as an attempt to bribe or influence.
- 13.5 All gifts should be reasonable and not excessive in value, given the specific circumstances, and should not be repeated unduly. Moreover, they should be given or received with no intent or prospect of improperly influencing the recipient or getting anything in return, including business or other favours or preferential treatment. Gifts and entertainment, given and received, should be acceptable when all facts of the situation are considered. Particular attention should be given to the intention of the gift, hospitality or benefit offered or accepted, as this determines whether it may be construed as a bribe or given to influence the relationship. The criterion is whether the intention, actual or perceived, is aimed at inducing improper performance, regardless of the actual value or outcome of the offer.
- 13.6 What is considered to be acceptable cannot be quantified, as it will differ according to job categories, levels and situations. For instance, even a low-value gift, hospitality or benefit can create a COI when negotiating contracts. As such, a conservative approach should be followed. This is especially true for the EXCO, as they set the tone for the rest of the organisation.
- 13.7 In the interest of fairness, this Policy applies equally to gifts and entertainment given and received. This Policy does not differentiate between TCTA employees giving gifts and entertainment to outside stakeholders or receiving gifts and entertainment. This is because, as a values-driven organisation, TCTA's approach is not to put its stakeholders in a position of being faced with a conflict of interest in their relationships with TCTA.
- 13.8 Gifts and entertainment given or received by TCTA employees from external parties are either:

- i. Never acceptable;
- ii. May be acceptable, but require prior approval; or
- iii. Usually acceptable and require no approval.

Again, a line manager or Compliance and Ethics Officer should be consulted if there is any doubt. Employees are responsible for familiarising themselves with these three categories, as described in the TCTA COI Toolkit.

## **14. COI REGISTERS**

14.1 The Compliance and Ethics Office shall maintain all registers associated with this Policy in a centralised place in an electronic password-protected system.

14.2 The following registers and documentation dealing with COI situations have been instituted and must be used by personnel at all relevant times:

14.2.1 COI questionnaire / Annual Declaration form; and

14.2.2 COI Gift and Entertainment.

14.3 The registers mentioned above, forms and information about these registers and forms will be made available on SharePoint. The Compliance and Ethics Department will retain the paper copy of the registers, together with the relevant information.

14.4 All declarations shall be concluded in line with the format of the forms mentioned above and duly signed by the declarer. The forms are to incorporate, as a minimum, the following information:

14.4.1 Name of the person declaring the COI;

14.4.2 Position/designation in TCTA;

14.4.3 Employee number;

14.4.4 Identity number;

14.4.5 To whom was the conflict declared (name and position);

14.4.6 Date of the declaration;

14.4.7 Organisation or individual involved;

14.4.8 Brief description of the conflict; and

14.4.9 Action taken/comments.

14.5 The register will be made available to the HCSEC for inspection bi-annually and annually to the Board.

## **15. ROLES AND RESPONSIBILITIES**

### **BOARD**

15.1 The Board is responsible for setting, approving, and overseeing adequate policies and procedures to identify, prevent (to the extent possible), and manage COI within TCTA.

## **EXCO**

- 15.2 The EXCO shall ensure that the policies and guidelines set by the Board are implemented and maintained in the day-to-day operations of TCTA to identify, prevent (when possible) and manage COI.
- 15.3 In this context, EXCO is also responsible for complying with all the provisions of the COI Policy and taking a specific action (including but limited to recusal from decisions), preventing (when possible), managing and adequately documenting any COI between TCTA and members of the EXCO.

## **LINE MANAGEMENT**

- 15.4 Assessing COI reported to them to determine if it exists;
- 15.5 Seeking to identify, mitigate and document COI in their area of responsibility;
- 15.6 Ensuring that their subordinates are familiar with this COI Policy and the related Conflict of Interest Framework and they complete the relevant awareness training;
- 15.7 Adopting in their area of responsibility supplementary procedures where needed;
- 15.8 Reviewing on a regular basis any reported conflicts of interest to ensure these are being managed in accordance with any agreed solution.

## **ALL EMPLOYEES**

- 15.9 Employees are responsible for identifying and managing conflicts of interest on an ongoing basis. TCTA requires that all employees comply with this policy, rules and other applicable policies and procedures relating to identifying, documenting, escalating and managing conflicts of interest.
- 15.10 All employees should challenge and promptly escalate issues of concern to their line managers, Internal Audit or Compliance and Ethics Office so that conflicts of interest may be appropriately reviewed, managed, and resolved. For the avoidance of any doubt, management is also considered an employee for the purpose of this Policy.

## **COMPLIANCE AND ETHICS OFFICE**

- 15.11 Compliance and Ethics Office is responsible for providing advice and guidance on interpreting the COI Policy and providing support in setting and/or validating (if set by others) controls and mitigation measures, including those recorded in the COI Register.
- 15.12 Compliance and Ethics Office is required to have general oversight of and to determine, when required, the best course of action to prevent (when possible) and manage the COI, including further escalation to a higher management level, where necessary.

## **16. NON-COMPLIANCE WITH THE COI POLICY**

- 16.1 Non-compliance with this Policy, depending on the seriousness of the breach, may result in disciplinary action in terms of the Disciplinary Code and Procedure.

- 16.2 Non-compliance with this policy might range from a failure to register a relevant private interest or refusal to resolve or properly manage a conflict of interest of which an employee is aware. A more serious violation of the Policy may be in the form of an employee acting on a conflict to the disadvantage of the public and TCTA interest.
- 16.3 If the Board, HCSEC or Ethics Officer has reasonable cause to believe an employee has failed to disclose actual or possible conflicts of interest, it shall inform the employee of the basis for such belief and afford the employee an opportunity to explain the alleged failure to disclose.
- 16.4 If, after hearing the employee's response and after probing as warranted by the circumstances, the Board, HCSEC or Compliance and Ethics Officer determines that the member has failed to disclose an actual or possible conflict of interest, appropriate disciplinary and corrective action shall be taken.

## **17. COMPLIANCE REVIEWS**

The Compliance and Ethics Office will conduct compliance reviews quarterly to test the non-disclosure of interests by:

- 17.1 Conducting directorship searches of employees using their ID numbers and comparing information obtained to the membership of entities on the TCTA supplier database; and
- 17.2 Comparing information obtained to the completed declaration forms of all TCTA employees, including EXCO.

## **18. TRAINING AND AWARENESS**

TCTA will train and educate its employees on this Policy to ensure they are well acquainted with its contents. Training and education will be conducted in conjunction with HR and other identified departments. It will be carried out in various forms, such as workshops, internal training sessions and induction programmes.

This policy will be available via TCTA's intranet and internet sites. Where an employee does not have access to the intranet, their line manager must ensure that they have access to a copy of this Policy.

TCTA will also consider alternative ways of educating and creating awareness of principles contained in the Conflict of Interest Policy. It will consider, amongst other things, the following:

- 18.1 Issuing information to re-enforce policy, e.g., examples of possible conflicts of interest via email or organisational newsletters, posters and pamphlets, during the induction programme;
- 18.2 Provide ongoing training programmes on conflict-of-interest examples and recommended actions, corruption prevention, managing gifts and benefits, as well as fraud control and conflict of interest;
- 18.3 Screensavers on computers with appropriate management of conflict-of-interest messages;
- 18.4 Attachments to tender invitations relating to the TCTA's stance on fraud and conflict of interest, where such irregularities can be reported and the actions which will be considered;

- 18.5 Prudent terms in contracts signed with providers of goods and/or services relating to the offering of gifts to employees of the TCTA;
- 18.6 Include conflict of interest/corruption prevention as an agenda item for specified meetings; and
- 18.7 Signing of declarations of commitment to the Policy by all employees.

## **19. MONITORING**

The Compliance and Ethics Department will review the operation of this policy as necessary to ensure that the strategy to manage conflict of interest within TCTA remains relevant. The Internal Audit department will review the strategy's effectiveness and should at least once a year report on the findings of the review to the Audit and Risk Committee.

The executives and line managers will also assist with monitoring adherence to the Policy within their own departments. In monitoring, they must assess, in consultation with an employee, the following:

- 19.1 Original situation that has given rise to declaring the conflict of interest;
- 19.2 Initial determinations and management decisions;
- 19.3 Strategy put in place to manage the conflict of interest;
- 19.4 Actions taken in implementing the management strategy;
- 19.5 Changes in the situation that may have an impact on the management strategy;
- 19.6 Perceptions held by others that the conflict of interest is having an improper influence on the matter;
- 19.7 Reassessments and management decisions made about the continued management of the conflict of interest; and
- 19.8 Changes made to the management strategy and its implementation.

## **20. POLICY REVIEW**

The owner of this Policy is the CEO, and the custodian is the Chief Risk Officer, who is responsible for its administration, revision and interpretation. This Policy will be reviewed every three( 3) years, and appropriate changes will be incorporated should these be required.

## **21. EFFECTIVE DATE**

The effective date of this Policy is the date of approval by the Board.



## **Conflict of Interest**

### **Guide and Toolkit- to Conflict of Interest Policy**

## CONTENTS

The Conflict of Interest (COI) Guide and Toolkit comprises Fact Sheets, Checklists, and Quick Tips Sheets which are designed to provide practical assistance to TCTA employees in addressing day to day COI scenarios.

The four chapters are available to download as separate documents on SharePoint.

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COIs are an inevitable fact of organisational life and require a systematic risk management approach to ensure that the public interest is always protected. The steps required to mitigate perceived, potential and actual COI risk will vary in different circumstances.

The COI Toolkit is intended to assist in the application of TCTA's COI Policy to typical risk situations. It is the employee's responsibility to ensure that the steps they take in any given circumstance are reasonably sufficient to avoid risks to the public interest. A failure to do so may lead to disciplinary action.

New documents will be added to the COI Toolkit as needs are identified. Please send any suggestions and feedback to the Compliance and Ethics Department.

**For further information and advice, contact the Compliance and Ethics Department at [ethics@tcta.co.za](mailto:ethics@tcta.co.za)**

## GENERAL INFORMATION ABOUT CONFLICT OF INTEREST

### TYPICAL CONFLICT OF INTEREST SCENARIOS

The following are typical situations where conflicts of interest may arise. In each of these circumstances, the minimum obligation on the employee will be to annually declare his/her conflict to the Compliance and Ethics Office. Other steps may need to be taken to mitigate any risk to the public interest. See the [COI Policy](#) for further information and guidance on managing these situations.

Although not exhaustive, employees must refrain from the following, which TCTA deems to be likely to result in conflicts of interest. These are just the examples of COI that may exist, and which will be regarded as breaches of this Policy:

- 6.1 **Close relationships** with people in entities with which TCTA does business and in decision-making positions within TCTA (this also includes family members or friends in entities doing business with TCTA). Such relationships include family, close friendship, and even common private club memberships (for example leisure, sports or investment clubs or joint property ownership). It follows, therefore, that an employee must recuse themselves and they are not allowed to be involved in the hiring decision, supervision, management or career planning of the employee's spouse, family members or close friends.
- 6.2 **Activities that compete significantly for resources** such as time and working facilities. This could include non-TCTA work (for gain or not for gain), positions and membership outside TCTA (for example directorships, trusteeships, or public office) or study activities unrelated to the work performed for TCTA. Employees may not be engaged or take part directly or indirectly, whether as an employee, director, consultant, trustee or in any other capacity, in any business without TCTA's prior written consent. In the event where a potential candidate that is being engaged by TCTA is contracted somewhere else for any remunerative private work or activities, she or he must be required to declare the same in writing before accepting or immediately after accepting the job offer.
- 6.3 **Any direct or indirect provision of services or goods to TCTA by a TCTA employee on a commercial basis** (for example additional compensation and above their normal duties), is regarded as a significant conflict of interest. As such, no TCTA employee himself or herself or together with family members of the employee, partners, or other business associated with the employee or other employees will be allowed to be a supplier of goods and services to TCTA.
- 6.4 **Holding investments or financial interests, directly or indirectly**, in a business contracting or seeking to do a business with TCTA.
- 6.5 **Undue privilege** derived by TCTA employees, family members or close friends as a result of being a party to valuable information, receiving or giving gifts or entertainment that might place employees under an obligation to reciprocate, or being offered business or other opportunities.

## MYTHS AND FACTS ABOUT CONFLICT OF INTEREST

MYTHS	FACTS
COIs only arise where private financial interests are involved	<p>No. A COI may exist in any situation where an employee's public duty could be influenced by their values, interests, affiliations, loyalties or prior involvement or associations. COI can arise where both pecuniary (financial) and non-pecuniary interests are involved.</p> <p>While risks of a COI arising may be more obvious where financial benefits are involved COI can arise out of personal relationships, or involvement in sporting, cultural or social activities. Personal enmity as much as from favoritism has the potential to lead to a COI. Where COI arises, steps need to be taken to mitigate risks in those situations.</p>
A COI is when you exercise your public office in order to get a private benefit.	<p>No. This constitutes fraud or corruption. COIs usually arise innocently, often by a coincidence of circumstances and without anyone being at fault. However, where a COI exists there is an obligation on the employee to take reasonable steps to mitigate it in order to protect the public interest.</p>
Real COI's are rare, and they usually only apply to upper management.	<p>No. COIs are common, and they can affect anyone. Risks are particularly high in some areas like recruitment and procurement, which can involve people at all levels of the organisation.</p>
If you and your team are focused on providing TCTA with the best outcomes, any incidental private benefit is not a problem.	<p>No. In achieving outcomes for TCTA, it is part of the employee's public duty to maintain public confidence in government by acting in accordance with the TCTA values of integrity and accountability.</p> <p>Any reasonable perception that you or your friends or family are benefiting from the exercise of your public duty creates the potential for the community's loss of confidence in the public service as a whole. Employees are obliged to identify these risks and take action to mitigate them.</p>
The existence of a COI is damaging to your integrity.	<p>COIs are an inevitable fact of organisational life and are not in themselves signs of wrongdoing. What is important is how an employee responds once a COI is identified.</p>
<b>Taking action to mitigate risk</b>	
You only need to tell your line manager/Executive about a COI if you think there is a risk.	<p>No. Employees are required to tell their line manager/Executive about any COI affecting their public duty, even if they believe that the risks are minimal, and they do not need to take any mitigating action. It is not sufficient to disclose a COI to peers or subordinates.</p>

MYTHS	FACTS
	TCTA's policy acknowledges that public confidence in government and TCTA values of accountability and integrity are best maintained when conflicts of interest are not wholly managed by those whose private interests are involved.
All Executives should disclose any COI to the in terms of the TCTA declaration process to the Compliance and ethics Office.	Not quite. Disclosures of COI should be made to the Compliance and Ethics Office.
For Executive Officers and senior line managers: If you have disclosed a COI issue in your annual Declaration of Private Interests no further steps need to be taken.	No. Like reporting a COI to your line manager, making DPIs does not in itself necessarily mitigate the risks. Further steps may need to be taken so that the public interest is protected. Any COI declared on the DPI should also independently be disclosed to the Compliance and Ethics Office.
Once you have reported a conflict to your line manager, it is up to them to do something about it.	No. Managing COI is a shared responsibility. Line managers are responsible for facilitating compliance with the COI policy by their staff. You are responsible for taking steps to mitigate any conflict of interest and complying with the lawful and reasonable directions of your line manager. Any failure to comply with COI policy or the directions of your line manager in respect of any COI may be grounds for disciplinary action.
If you have identified a COI, you must step aside.	No. You should assess the potential risks to the public interest arising from the COI and take steps that will reasonably address those risks. In some cases, after disclosing the matter to your line manager, nothing further will need to be done. In more serious instances, you may have to relinquish the private interest which is causing any conflict or to step down from any position you hold on a temporary or permanent basis. See strategies for mitigation: Register, Recruit, Relinquish, Restrict, Remove, Resign.
Your Executive/line manager can't force you to relinquish a private interest.	Public sector employees are required to avoid any COI. Where private interest conflict with your public duty, it may be considered a lawful direction for your line manager to tell you to relinquish that interest. If you fail to do so, you could be subject to disciplinary action which may result in the termination of your employment. However, any direction by your Executive/line manager must be reasonable. They should first consider whether any alternative measures could be taken which sufficiently address the risk arising from the COI. If you believe your line manager's direction is unlawful or unreasonable, you can make an

MYTHS	FACTS
	application for a personal grievance to the CEO to have the direction reviewed.
Private interests often cannot be reported because of confidentiality requirements.	No. If a private interest conflict with your public duty or might be seen to do so, you must report it to the Compliance and Ethics Office /line manager and then take any further steps required to mitigate any risks. However, it is not usually necessary for your private interests to be disclosed to anyone other than the Compliance and Ethics Office/line manager unless this is required to manage the risks.
<b>Recruitment issues</b>	
An employee's family member should not apply for a position at TCTA.	A person should not be precluded from working for TCTA because they are related to an employee who works there. If a friend or family member applies, steps need to be taken throughout the recruitment process to avoid real and perceived COI. If they are successfully appointed, further steps need to be put in place in relation to their ongoing employment in TCTA to avoid potential COIs. See Case Studies for more information about managing COI during recruitment.
If a selection panel member knows an applicant, they only need to disclose this if the applicant is shortlisted for an interview.	No. They have identified a potential COI. They should report their knowledge of the applicant at the earliest possible opportunity so that no part of the process can be tainted by any real or perceived COI.
<b>Procurement</b>	
It's ok to own shares in a company that trades with the TCTA.	Yes. However, if you are involved in procuring or advocating that company's services for TCTA, there would be a COI and you would be required to take appropriate mitigating steps. This may involve relinquishing the shares.
If a company provides "sweeteners" on a contract, you can accept them if you are sure they will not influence your judgment.	No. The acceptance of any gift, benefit, or hospitality from such a company creates a real or apparent COI issue that must be avoided. TCTA COI policy provides strict guidelines on when gifts may be accepted or offered.
<b>Consequences</b>	
A failure to declare COI will not have a significant effect on my employment.	No. The public sector or government are required to avoid any real or apparent conflicts of interest. An employee's failure to identify, report, address or monitor COI in accordance with TCTA's policy could constitute misconduct and lead to disciplinary action which may lead to their dismissal.

## CHECKLIST: FOR LINE MANAGERS ADDRESSING EMPLOYEE CONFLICTS OF INTEREST

Executives/Line managers have a responsibility to ensure that the public interest is protected in situations where they or their employees are subject to conflicts of interest (COI). Information about COI issues may come to an Executive/line manager's attention in several ways. Employees must disclose any COI affecting them to their Executive/line manager and they may also choose to raise potential COI issues with them even before they identify actual risk.

Executives/Line managers may become aware of COI issues from other sources. They also have a positive obligation to act based on their knowledge or reasonable apprehension of COI risk.

Whatever the source of the information about the risks of COI, managing the situation in accordance with COI Policy is a responsibility shared by the employee and their Executive/line manager.

The following steps should be considered by Executives/line managers in addressing COI issues affecting their employees:

### 1. Discuss with employee

Discuss the COI issue with the employee to obtain as much information as possible regarding the circumstances of the COI risk. Refer the employee to the COI Policy and advise them of their responsibility to resolve the conflict in favour of the public interest.

### 2. Seek written submission from employee.

Where an employee is subject to a COI or potential COI, consider asking them to provide you with a written submission that outlines the nature of any COI, its potential risks, and any mitigating steps they consider would resolve it. Where the employee does not believe there is a COI, ask them to justify this view in writing, regarding the COI policy.

### 3. Form your view

Make your assessment of the situation and surrounding circumstances based on the information you have. Take reasonable steps to get more information if necessary. Determine the level of COI risk and minimum steps to address the risk.

### 4. Is your employee's suggestion adequate?

Assess whether your employee's preferred management strategy is reasonable, given the risks of real or apparent COI. Assist the employee in developing an appropriate strategy. If it is reasonably necessary, direct the employee to adopt a particular mitigation strategy.

### 5. Record decisions taken

Make a record of your discussions and actions and maintain appropriate confidentiality over the information. Submissions and decisions relating to COI may be retained on the employee's personnel file for reference (where appropriate, these documents should be retained in a sealed envelope marked "Confidential").

### 6. Monitor the situation

Remember to monitor the management of the COI periodically and in response to changing circumstances. Make a record of any reassessment, decisions made, and actions taken throughout this process.

## If you have a COI yourself

If you have a private interest that is affected or can reasonably be perceived to be affected by your management of your employee's COI, you should report this to your line manager and consider whether other steps are required to mitigate the risk. For example, you could refer to the management of your employee's COI to your line manager. Remember to record your decisions, even when you decide that no positive action is necessary.

## Disciplinary action

If you believe your employee has not acted in accordance with the COI Policy, you should:

- Address the COI as soon as possible and take steps to mitigate any possible risks, as above.
- Raise the allegation with the employee. You may want to consult the HR and OD for support in addressing an employee's potential breach of their obligations.

## Remember:

- COIs usually arise without anyone being at fault – the existence of a COI does not in itself undermine an employee's integrity.
- However, where a COI exists, employees have a positive obligation to report COIs and to take reasonable steps to address the risk.

The Compliance and Ethics Office can be contacted for advice on managing allegations against employees: email [ethics@tcta.co.za](mailto:ethics@tcta.co.za) or

## Further advice

Employees can seek assistance from Advance Call -Ethics and Fraud Hotline (012) 683 1231 or [info@tcta.co.za](mailto:info@tcta.co.za)

## CHECKLIST: EVALUATING PECUNIARY (FINANCIAL) INTERESTS

Use this checklist to help you evaluate the extent of any Conflict of Interest (COI) created between your pecuniary (financial) interests and your employment with TCTA.

Please note this is not a form that needs to be filled out. It contains information and checklist questions that are designed to assist you to evaluate COI in relation to your pecuniary interests. It is up to you how you record your answers to the questions and then determine what steps you need to take to mitigate risks to the public interest.

Employees can contact the Compliance and Ethics Office on [ethics@tcta.co.za](mailto:ethics@tcta.co.za) for assistance in evaluating the risks of COI.

### A note on perceived COI

When evaluating the extent to which a private pecuniary interest might influence your public duty, try to think about the situation objectively; consider how a reasonably informed third party looking objectively at your situation would view it. Consider also what processes can be put in place to assure with a third party that any COI is avoided.

## 1. What is a pecuniary interest?

Pecuniary interests involve an actual, potential, or perceived financial gain or loss. Money does not need to change hands for an interest to be pecuniary. For example, you would have a pecuniary interest if you (or your relative or close associate) own property, hold shares, have a position in a company bidding for government work, or receive benefits such as concessions, discounts, gifts or hospitality from a particular source.



As soon as a pecuniary interest of a relative or associate is recognised you must treat it as if it were your pecuniary interest even if you would not receive any material benefit yourself through your relationship with them.

## **2. How is a relative or associate defined for any declaration?**

A relative generally includes anyone who is part of your immediate family or someone who is wholly or substantially dependent on you and whose affairs are closely linked (e.g. a parent).

An associate is anyone whose affairs are closely linked to yours, and through whom you might receive some type of direct or indirect (but not necessarily pecuniary) benefit.

## **3. When identifying pecuniary COIs, ask yourself these questions:**

In relation to a matter in which I exercise some decision-making authority, or which my public position gives me the capacity to influence:

- Is there a realistic expectation that I will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?
- Will the matter affect my earning capacity or financial situation?
- Will it have an impact on the value of any shares or property that I own?
- Do I have a second job or private business that may be affected by the matter?
- Do I have any debts owing to a person who will be affected by the matter?
- Have I accepted hospitality, sponsored travel or other benefits from a person who will be affected by a decision under my authority?
- Is there a realistic expectation that someone in a personal or business relationship with me will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?
- By nature of my relationship with this individual, would any benefit or loss they receive be expected, under normal circumstances, to flow through to me?

## **4. Additional considerations concerning shares**

It is TCTA's position that any ownership of shares should be declared where there is a potential COI. It may be determined that your ownership of these shares has no significant actual or reasonably perceived influence on the exercise of your public duties, and no conflict is likely to arise. However, when there is any doubt, it is best to register the potential COI and discuss this with your line manager or Ethics and Compliance Office.

Generally, shares held in an annuity, mutual, pension or other investment funds in which an employee has an interest but does not exercise control, do not need to be declared.

It is important also when purchasing shares to consider whether your duties as a public servant have informed your decision to purchase those shares. Any private use of government information that is not in the public domain represents a failure of honesty, impartiality, and the duty of the public employee to put the public interest first.

## **QUICK TIPS: FOR MANAGING PERSONAL RELATIONSHIPS**

A risk of real or apparent COI exists where an employee (such as an Executive or line manager) exercises authority which can affect the rights or responsibilities of another employee with whom they have a significant personal relationship.

## Assessing the risks

Where an Executive/line manager has a personal relationship with an employee, COI risks typically arise in these areas:

- Receiving and managing complaints against the employee.
- Management of the Performance and Development Process and awarding progression; and
- Allocation of duties and responsibilities.

At all times consider whether it could be said that you are exercising your authority in a way that provides you with a benefit. Even if your primary aim is to benefit TCTA, there is a risk to the public interest if you can also be seen to be gaining an indirect or direct benefit.

Consider how you would feel if other employee knew about the situation, or it was reported in the newspaper. Think about the reputation of TCTA and your obligations under the Code of Business Conduct and Ethics to promote and maintain integrity and excellence.

## Mitigating the risks – taking action.

- Establish clear processes for managing relevant situations so that the risk of actual or perceived bias is mitigated.
- Communicate these processes to all relevant employees and stakeholders; and
- Monitor the effectiveness of any such processes.

Where reasonably practicable, decisions affecting the rights/responsibilities of the relevant employee should be referred to your superior.

Remember: the greater the potential benefit to you, the greater the risk to TCTA and the more important it is to take whatever steps are necessary to avoid the perception of bias in the exercise of the relevant authority.

## CONFLICTS OF INTEREST WHEEL

### 1. Identify a conflict

- Could your private interests (financial and non-financial) unduly influence your public duty?
- Could a conflict be reasonably perceived, even where none exists?

## High risks of COI

COI issues can arise in relation to almost any area of work and can affect most, if not all, employees. The following areas are prone to risk and therefore warrant particular attention:

- recruitment and selection.
- tendering and procurement.
- regulation and grant approval.
- other employment (e.g. tutoring, conducting a private business).
- gifts, benefits, hospitality; and
- complaints management and disciplinary investigations.

## What is COI?

COI arises when the exercise of a public duty is influenced or can be seen to be influenced, by private interest. COI usually arises without fault or fraudulent intent. However, even without improper intentions, COI can have a detrimental effect on organisational performance and reputation. They create a risk for the organisation which should be managed, like all other risks.

## 2. Address the risks

**Report any conflict to your line manager.** Then take reasonable steps to mitigate any risks to the public interest which might arise from the conflict of interest. Further management strategies include:

- **Registering** the private interest with the relevant Committee, Board, or in another open forum for accountability and transparency.
- **Restricting** your involvement in public duty.
- **Recruiting** a disinterested third party to oversee part of the public duty (such as accepting a selection panel's decision in your place).
- **Removing** yourself from all responsibilities in relation to public duty.
- **Relinquishing** your private interest (such as selling financial interest); and
- **Resigning** your public office (temporarily or permanently).

### Employees must

- Be aware of their obligations under the TCTA's COI policy.
- Continuously assess their private interests and public duties to identify actual, potential, or perceived COI.
- Report identified COI to their line to Compliance and Ethics Office (Disclosing to peers is rarely sufficient).
- Assess the risks of an identified COI and take reasonable steps to protect the public interest.

Employees should seek advice from their line managers/Executives or the Compliance and Ethics Office at any stage.

### Reasonable steps

The steps which are reasonably necessary to mitigate any identified COI may vary in different circumstances over time.

### Role of line manager/Executive

Line managers/Executives should be proactive in facilitating their division's employees comply with the policy by:

- assessing the COI risks inherent to the work of their staff,
- advising employees of their obligations,
- recording COI reported to them,
- assisting their employees in responsible management of any COI, and
- taking appropriate disciplinary action in relation to their division's employee's failures to comply with COI Policy.

Line managers can seek advice on COI policy and processes by contacting the Compliance and Ethics Office.

### 3. Monitor

Review the situation periodically and when circumstances change: identify new conflicts and consider whether existing management strategies are still sufficient.

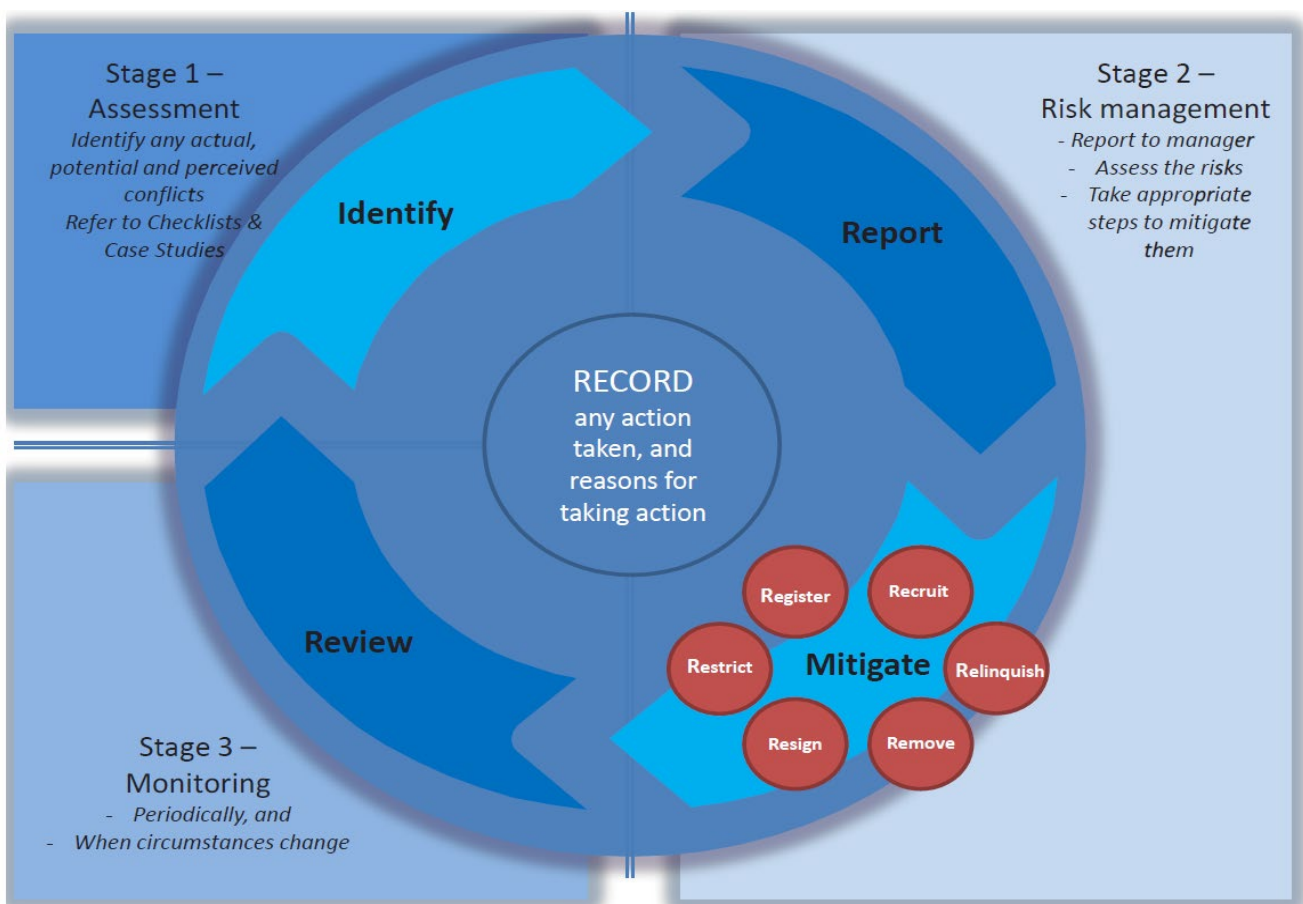
#### COI may be actual, potential, or perceived

**Potential** COIs are conflicts that may arise in future. For example, if you can foresee that a family member's company could reasonably be expected to tender for a contract for which you are planning the terms of reference, you have a situation of potential COI which can, and in many cases must be addressed. Reporting potential COIs as early as possible also often avoids future complications.

**Perceived** COI are situations where a third party might consider that an employee is subject to an actual COI. For example, when an employee removes herself from a selection panel that selects her family member for a role in TCTA or any of the service providers of TCTA, a perception of a conflict might still exist if she does not also remove herself from participating in the selection process.

#### Poor management of COI undermines

- organisational performance, stakeholder support for decisions, public confidence in government



## MANAGING CONFLICTS OF INTEREST IN RECRUITMENT

### CASE STUDY: CONFLICT OF INTEREST IN RECRUITMENT

An organisation identifies the need for a part-time IT technician to manage the school's communications networks and to provide tech support. The Executive's son is studying IT systems and he is looking for part-time work with which he can gain experience in the field.

The Executive works with members of the school leadership to determine the nature of the role including its responsibilities, time-fraction, remuneration etc. She does not tell them that her son could be a potential applicant.

In their deliberations, there is a dispute over whether the role should be full-time or part-time. The Executive is concerned that a full-time position would unreasonably stretch the financial capacity of the school given other spending priorities. The Executive is aware that her son could not take on a full-time job at the school in addition to his studies. In the end, they settle on advertising for a 0.6 position.

When it is advertised and the Executive's son applies, she **reports** the conflict of interest to her leadership team and **restricts** her involvement in the process by removing herself from the Selection Panel. She retains responsibility for confirming the Panel's recommendation.

#### **Are there any COI issues that have not been addressed?**

Once her son applied, the Executive took appropriate steps to address the COI by **reporting** it to her leadership team and **restricting** her involvement in the decision making. This meant she was not able to influence the Panel's deliberations over the candidates.

However, since all the members of the panel are her subordinates, the situation could still have created a **perception** of a COI. Even if the members of the Panel felt they could turn an impartial mind to assessing the quality of the applicants for the position, a reasonable person might suspect that they would all be influenced to recommend the Executive's son for the position.

At the very outset, there was also a **potential** conflict of interest. The Executive knew that her son was likely to apply for the position, but she did not disclose this information until after she had finalised the role description. As a result, a reasonable person could later think that she was influenced in shaping the role description by her son's availabilities and qualifications rather than the needs of the school.

This perception creates a risk for the Executive's reputation and the reputation of the Department and could lead to discontent amongst staff. It also may have compromised the outcome for the school. As a result of the decision to create the role as a 0.6, the school may have missed out on better quality applicants—professionals who were looking for full-time work. Because of her focus on her son, the Executive may not have given this issue due consideration when determining the time-fraction for the role.

#### **What should the Executive have done?**

All the circumstances need to be considered in determining what steps are reasonably necessary to avoid any damage to the public interest. In this case, the Executive probably should have disclosed her son's interest with her leadership team when determining the role description. Consideration could then have been given to whether it was necessary to have her step aside from that part of the process.

To address the perceived conflict of interest in the selection process, she should have **reported** it to her superior and then **removed** herself from the process further by referring the approval of the Panel's decision to the Regional Director.

## Opportunities for further guidance

To ensure consistency in the application of these principles, Regions and business groups in the Department can establish explicit guidelines for their Executives and line managers on steps they should take in these circumstances. For example, where COI issues are identified, Regional Directors might require their Executives to refer to the approval of selection panel recommendations to other Executives in the network or their SARPP.

## Other COI issues after recruitment

If her son is appointed to the school, her relationship with him will create further actual and perceived COI risks whenever she makes a decision that could affect his role, status or rights—for example, when allocating him duties, granting him permission to work from home or to work overtime, etc.

The Executive should act as early as possible to put in place processes to manage future COI issues in a way that avoids creating the impression that the Executive is unreasonably favoring her son. For example, if staff members have concerns about her son's conduct or performance, there should be a process for these concerns to be reported and addressed in a way that doesn't involve the Executive. To help prepare for these situations, the Executive could consider using the **COI Checklist - Selection** in the COI Toolkit.

## Remember these tips

When you are responsible for recruiting for a position where you have a personal relationship with a potential applicant, you should:

- Assess the process for current or future risks of COI.
- Disclose/report any actual, potential, or perceived COI as early as possible and take any necessary steps to avoid undue influence. Also, make sure the COI is reported to a superior – it is rarely sufficient to report conflicts to subordinates or peers.
- Think about the perception of conflicts of interest as well, as actual conflicts and take sufficient steps to address the risks of both.
- Record all decisions made—even decisions not to take any action.

## MANAGING COI IN OTHER (EXTERNAL) EMPLOYMENT

### CHECKLIST: OTHER (EXTERNAL) EMPLOYMENT

Use this checklist to help you evaluate the extent of any conflict of interest created between your **other employment** (external employment) and your employment with TCTA.

Some questions overlap each other, addressing the same topic, but expressed differently to help you think through the issues. It is useful to read each section first before going back to answer the questions in any detail.

Please note this is not a form that needs to be filled out. This checklist is designed to assist you to evaluate COI in relation to other employment. It is up to you how you record your answers to the questions and whether your answers then form the basis of further action.

Employees can contact the Compliance and Ethics Office [ethics@tcta.co.za](mailto:ethics@tcta.co.za) for assistance in evaluating the risks of COI.

### A note on perceived COI:

**When evaluating the extent to which other employment might influence your public duty, try to think about the situation objectively; consider how a reasonably informed third party looking objectively at your situation would answer them. Consider also what processes can be put in place to assure a third party that any COI is avoided.**

### Questions relating to identifying COIs – for full-time and fixed-term contract employees

1. What is the nature of the interaction, if any, between the other employment and TCTA? Does this interaction create any real or perceived risks of COI?
2. Is there any commercial engagement between my other employment and TCTA? For example, is my other employment with an organisation that has a current commercial arrangement with TCTA or is likely to enter one in future?
3. Does my other employment service the same people or groups of people as TCTA? For example, are my private clients' service providers, consultants?
4. How similar is my role in the other employment to my role as an employee of TCTA? If my other employment involves a similar role, do I consider my primary employment to be with TCTA? Would people in my professional networks share this view?
5. Is my activity in the other employment likely to reflect negatively on my role as an employee of TCTA? What would be the effect on my standing in TCTA if my other employment fails or attracts negative publicity? Does my other employment involve any obvious political or organisational affiliations which may affect my standing or capacity as an employee of TCTA?
6. Is my role as a TCTA employee likely to provide a direct or indirect benefit to my other employment—for example, potential clients, professional networks, information and knowledge, reputation?
7. Do I intend to solicit employees from TCTA to work for my other employment?
8. If my work colleagues knew about my other employment, would this cause me any concern or embarrassment? If it would, why?

If, after answering these questions, you think you may be subject to an actual, potential, or perceived COI, you should report it to the Compliance and Ethics Office or your line manager. You should then evaluate any risks to the public interest and determine what actions will mitigate those risks. Any decisions made should be recorded.

### Questions about your capacity – for full-time employees

Full-time employees are required to seek permission and approval to undertake any other employment. When deciding whether to grant permission, line managers and Executives can take account of the practical implications of the proposed other employment on an employee's capacity to perform their role as a TCTA employee to the expected standards.

**Time** - What you do in your spare time is a matter for you. However, it is not unreasonable for your primary employer to consider whether your other employment may have an impact on your capacity to work your regular hours. For example, if you are seeking permission to work evening shifts during the week and your employment for the Department requires you to work regular 8:00-16:30 hours, permission would generally not be granted.

In your submission, address the following questions:

1. Does the other employment demand regular hours per week, or is the time commitment irregular? If it is irregular, how flexible is it?
2. Could the hours worked in the other employment affect your ability to perform your public duties safely and with due care?
3. Consider: what is the chance that you will require time off work because of the other employment and is this predictable?
4. How can you ensure that your work for TCTA is always prioritized over the other employment?

### **Contact for other employment during regular work hours**

1. Does your other employment require you to be contactable (by phone or email) during your regular hours of employment for TCTA? If so, what is the likelihood of such contact?
2. Is your other employment such that you can perform some of the tasks while you are working for the Department? If this is possible, is it likely that you would do so? What assurance can you provide that you will not use your regular work time to work in your other employment? (Note that whatever steps you take to address this risk need to address the reasonable perception of other people).

### **Mitigating action**

If you propose to take mitigating steps to prevent a COI in relation to your other employment, you should describe those steps in detail, including how you believe they will have a measurable effect on any COI. For example, if your other employment services TCTA connected parties, you may take steps to ensure that it does not service-connected parties which you are currently working with or are likely to work with. Consider whether any undertakings you make should be communicated to stakeholders and whether steps you propose can be measured to determine their effectiveness.

### **QUICK TIPS: EXTERNAL CONSULTING**

Where a TCTA employee engages in consulting or contracting work for an external organisation, there is a risk that an actual, potential, or perceived conflict of interest exists.

Because of the risk of conflict of interest, where an employee seeks to engage in external consulting, they must seek their line manager's approval to do so.

### **Assessing the risks**

In assessing the potential risks, consider the following questions:

- Could you be seen to be using information gained in the course of your public duty to gain a private benefit?
- Could comments you make as a consultant be perceived as the official position or policy of TCTA?

Is your consultancy likely to seek work from TCTA? If so, there may be a perception that your involvement will provide it with an unfair advantage in any tendering process.

### **To mitigate the risks of COI, consider:**

- Reporting your intentions to undertake to consult your Executive/line manager prior to commencement of the work and seeking their permission/approval. Identify the scope of the intended work and its potential impact on your public duties.
- Undertaking not to use official information for the consulting work unless it is already in the public domain.
- Undertaking to incorporate in any document you produce for the consultancy a statement that the opinions expressed are your private views and are not attributable to TCTA.



- Undertaking to relinquish your consulting work if the organisation seeks to enter a business relationship with TCTA.

Note: these are only suggestions—not policy. The circumstances of each case should be considered when considering whether the proposed mitigating actions appropriately protect the public interest.

## **QUICK TIPS: OUT OF HOURS SPORTING ACTIVITIES**

Many employees coach, umpire, or play sport out-of-hours. For some, the sporting activities are a serious, semi-professional commitment and they sometimes involve the payment of money.

Private activities that involve some form of payment—whatever the amount—and voluntary activities that involve a significant commitment can be considered ‘other employment’ for TCTA COI Policy. This document deals with the obligations of employees who undertake sporting activities that would be considered ‘other employment.’

Full-time employees require permission from their Executive/line manager to engage in other employment and fixed-term contract employees must avoid engaging in any other employment that may involve a conflict of interest (COI). In most cases, there would be no COI involved in out-of-hours sports activities and any practical impact on an employee’s public duty could be easily mitigated. In these circumstances, there would be no reasonable basis for Executives or line managers to refuse to grant permission.

However, employees would still be required to report to and/or seek written permission from their Executive/line manager to undertake sporting activities where they receive a payment or which involve a significant out-of-hours commitment, in accordance with TCTA COI’s Policy. The details of the activity and a record of the Executive/line manager’s permission should be retained on the employee’s personnel file. This process promotes transparency and accountability across TCTA in relation to all other employment activities.

### **Assess the risks. Ask yourself—**

1. Does the activity provide a private benefit at the expense of your public duty? Are you able to use your public position to gain a direct or indirect benefit?
2. Does private activity create a situation where your actions conflict with your public duty? TCTA employees are expected to behave in a manner that would not affect their standing in the community or the reputation of the public sector. In many areas, sporting activities are highly visible to the community at large and as a result, any on-field behaviour can directly affect your duty as a public sector employee.
3. Does private activity have a practical impact on your public duty? Could you be tempted to use public resources (time, equipment) to support the private activity?

### **Take action.**

Report the out-of-hours activity to your Executive/line manager and seek permission.. Use the “Other work (outside employment) declaration and approval form in SharePoint. In the document, demonstrate your awareness of your obligation to behave in a manner that would not undermine your public duty. Report the amount of any private benefit you receive.

## MANAGING COI WHEN PROCURING GOODS AND SERVICES

### QUICK TIPS: CONTRACTOR ENGAGED FOR PRIVATE WORKS

A real or apparent COI may exist when a contractor used by TCTA is engaged for private work.

#### Consider the risks

- The contractor may be tempted to do private work at a discounted rate to ensure they remain in good favour for future public contracts. This way, the public official would improperly receive a private benefit (see also COI policy provisions on gifts).
- Even without the provision of any discount, if the contractor does regular private work for the public official, their mutually beneficial relationship might be seen to influence the public official in providing future public contracts.

#### Take action.

Ensure that the contractor's work performed in a private capacity is charged at the standard and published rates. (Remember, though, that this is not likely to address a perception in the community that the contractor provided a discount).

Ensure that the private work done is declared appropriately prior to any future public contract being awarded.

**Remember:** the greater the benefit—either to the public official or to the private contractor—the greater the risk to TCTA and the more serious the steps warranted to avoid any perception of COI. Where there are reasonable alternatives, or where the COI risks are particularly high, you should avoid using a contractor for private works who is involved in any work for TCTA.