

# Conflict of Interest, Nepotism and Cronyism

*The emergence of a new class of African businessmen who reject or are not keen to partake in the old system of cronyism, nepotism and self-dealing, and who demand openness, fair competition and clean business presents unprecedented opportunities. A key element of this new business constituency sees low corruption as essential to sustained economic growth.*

*E. Gyimah-Boadi<sup>1</sup>*

Given the interplay between the three concepts – conflict of interest, nepotism and cronyism are often rolled together in a single pithy phrase. This is particularly so when the crash of the “Asian Tigers” is being analysed.

### What is a conflict of interest?

A conflict of interest arises when a person, as a public sector employee or official, is influenced by personal considerations when doing his or her job. Thus, decisions are made for the wrong reasons. Perceived conflicts of interests, even when the right decisions are being made, can be as damaging to the reputation of an organisation and erode public trust, as an actual conflict of interest. In some countries, the law makes it compulsory for public agencies to have Codes of Ethics which cover these matters. Most countries consider the matter so important, and so fundamental to good administration, that they have a specific conflict of interest law. This can provide that e.g. “a State officer or employee shall not act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might be expected to impair his objectivity or independence of judgment.”<sup>2</sup>

### When does a conflict of interest occur?

Everyone has personal interests and people to whom they are close. It is inevitable that, from time to time, these interests will come into conflict with their work decisions or actions. The following checklist can help individual public servants identify situations where a conflict of interest is likely to arise:

- What would I think if the positions were reversed: If I was one of those applying for a job or a promotion and one of the decision-

#### How Indonesia's government lost its “legitimacy”

Suharto's Indonesia is among the world's most corrupt countries, a centre of crony-capitalism that has allowed Suharto and his family to amass a fortune estimated at \$30 billion - money essentially stolen from a country where tens of millions languish in poverty. Indonesians, for the most part, seemed resigned to the corruption and nepotism, so long as their economy continued growing at the 8 percent rate it had averaged throughout the decade. When the economy collapsed last fall, Indonesians saw no reason to continue tolerating Suharto's abuses... “Once the economy there disintegrated, the regime had no other base of legitimacy,” James Reardon-Anderson director of Asian studies at Georgetown University in Washington, D.C. said.

*The Atlanta Journal, 24 May 1998*

#### Turmoil in Asia

Until recently, many in Asia were often relaxed in their attitudes about corruption. In a region used to high levels of growth, corrupt or illicit behaviour was often overlooked. However, two developments have forced a radical reassessment, to the point where few would now deny that corruption exerts a heavy cost upon development in Asia. The first is the Asian crisis, and the fact that many have credited corruption, cronyism and nepotism with making a major contribution to the currency turmoil and falling stock markets that engulfed the region from mid-1997 until recently. The second development has been the rapid expansion in solid analytical work on the consequences of corruption, which has underscored just how costly, widespread and systematic corruption can be.

*Myoung-Ho Shin, Vice President Asian Development Bank in Developing Effective Anti Corruption Strategies In A Changing World, 9th International Anti-Corruption Conference, Durban, South Africa, October 1999*

<sup>1</sup> Prof. E Gyimah-Boadi, Centre for Democracy and Development, Accra, University of Ghana, Legon, in *Towards an enhanced role for civil society in the fight against corruption in Africa*, 9th International Anti-Corruption Conference, Durban, South Africa, 10-15 October 1999. The text available on the IACC web site: <http://www.transparency.org/IACC>.

<sup>2</sup> Examples of conflict of interest laws and post-public sector employment restrictions are to be found in the Best Practice

section on the internet version of this Source Book: [www.transparency.org](http://www.transparency.org). Conflicts of Interest can also arise in the private sector, but the discussion here is limited to the public sector. For a detailed discussion of the issue at senior levels of government, see *Conflict of Interest: Legislators, Ministers and Public Officials* by Gerard Carney (TI, Berlin) at <http://www.transparency.org/documents/workd-papers/carney/3c-codes.html>.

**Thailand's new constitutions outlaws conflicts of interest**

In terms of substance, specific provisions are included requiring government officials to be politically impartial (Section 70, Chapter IV) and which prohibit a member of the House of Representatives from placing himself or herself in a conflict of interest situation.

Sect 110 (Chapter VI, Part 2) clearly states that a member of the House of Representatives shall not:

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

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

*1997 Constitution of the Kingdom of Thailand*<sup>3</sup>

makers was in the position I am in? Would I think the process was fair?

- Do I, a relative, a friend or an associate stand to gain or lose financially from the organisation's decision or action in this matter?
- Do I, a relative, a friend or an associate stand to gain or lose my/our reputation because of the organisation's decision or action?
- Have I contributed in a private capacity in any way to the matter being decided or acted upon?
- Have I received any benefit or hospitality from someone who stands to gain or lose from the organisation's decision or action?
- Am I a member of any association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals who stand to gain or lose from the organisation's consideration of the matter?
- Could there be any personal benefits for me in the future that could cast doubt on my objectivity?
- If I do participate in assessment or decision making, would I be worried if my colleagues and the public became aware of my association or connection?
- Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?
- Am I confident of my ability to act impartially and in the public interest?

**What should happen if someone discloses a conflict of interest?**

When someone considers they may have a conflict of interest, what should happen then? Clearly, some "conflicts" may be so minor as not to warrant anything more than their being recorded and made known to the others who are participating. For example, a member might hold a small number of shares in a company which are so few that their value could not possibly be affected by the outcome of the particular matter under review. In such a case the oth-

ers involved in the process may feel comfortable with that person continuing to participate. Where they do not, however, the person should excuse himself or herself from further involvement. The following checklist can be used to assist in assessing a disclosed conflict of interest:

- Is all the relevant information available to ensure proper assessment?
- What is the nature of the relationship or association that could give rise to the conflict?
- Is legal advice needed?
- Is the matter one of great public interest? Is it controversial?
- Could the individual's involvement in this matter cast doubt on his or her integrity?
- Could the individual's involvement cast doubt on the organisation's integrity?
- How would it look to a member of the public or to a potential contractor or supplier to the organisation?
- What is the best option to ensure impartiality and fairness and to protect the public interest?

Although it is important to deal with perceptions of conflicts of interests, neither of these checklists should be seen as automatically disqualifying relationships that no fair and reasonable person would see as giving rise to a conflict of interest.

<sup>3</sup> See James R. Klein (1998) *The Constitution of the Kingdom of Thailand, 1997: A Blueprint for Participatory Democracy*, The Asia Foundation Working Paper Series, Working Paper #8,

March 1998 for an intriguing insight into the evolution of a participatory Constitution for Thailand.

## Other strategies for an organisation

Other strategies that an organisation can adopt to avoid compromising, or appearing to compromise, its integrity include:

- Keeping full and accurate records of its decision making processes;
- Ensuring openness by making accurate information about the organisation's processes, decisions and actions publicly available;
- Where there is a risk of perceptions of conflict of interests, ensuring the technical/expert judgement of participants in the decision-making can be substantiated.

## What is Nepotism?<sup>4</sup>

Nepotism is a particular type of conflict of interest. Although the expression tends to be used more widely, it strictly applies to a situation in which a person uses his or her public power to obtain a favour – very often a job – for a member of his or her family.

The nepotism prohibition is not a 'no-relatives' standard, but it does prohibit a public servant from using or abusing his or her public position to get public jobs for family members.<sup>5</sup> The objective is not to prevent families from working together, but to prevent the possibility that a public servant may show favouritism towards family members, in the exercise of discretionary authority on behalf of the public to hire qualified public employees. As a member of South Africa's Ombudsman's Office has said:

"A typical example might be where it is alleged that someone received an improper advantage in that he received, through the intervention of a family member who works for a certain department, contracts which that department puts out. It might be found that no criminal act is involved but unethical behaviour is. Nepotism is not yet classified as criminal in our law, yet it is clearly reprehensible and sufficiently unacceptable to require action on the part of the Ombudsman. Furthermore, the act of nepotism may be a red flag alerting the Ombudsman to the possibility of the official's perceived need to surround him or herself with those considered to be more than ordinarily capable of being relied upon to act with 'discretion'."<sup>6</sup>

Nepotism frequently occurs in the private sector, particularly in the context of promoting family members in family-owned corporations, where it is seen as legitimate. The impact of any preference is ultimately on the bottom line (profit) of the corporation, and the bottom line is family "property".

In the public sector, however, it means that the most suitable candidate fails to get a post or a promotion, and the public as a whole suffer as a consequence – not to mention the person who, had there been no nepotism, would have won the position. Or it can mean that a less competitive bid wins a government contract at the cost of the tax payers' money.

### Nepotism at the European Commission

"... This is the case, clearly, where favouritism is found. Very often, the appointment of an individual numbered among the close friends, or the 'entourage', of a Commissioner to a well-remunerated position in the Commission, or the granting of an equally well-remunerated consultancy contract, contravenes existing rules. This occurred where the person concerned was recruited into a staff category for which he lacked the qualifications required. However, even where no such irregularity occurs and no rules are infringed, Commissioners should abstain from appointing spouses, close family relations or friends, even those with appropriate qualifications, to positions for which an open competition/tender procedure has not been held. In such instances, there should at all events be at least an obligation of disclosure in the course of the appointment."

*Report of the "Committee of Wise Men" to the European Parliament, 1998.*

4 *Chambers Murray Latin-English Dictionary*, London, 1983. In a Report to the South African Parliament, the Public Protector (Ombudsman) observed that "the word "nepotism" is defined as favouritism shown to relatives or friends in conferring offices or privileges. It is derived from the word nepote which means nephew, apparently, originally with reference to Popes with illegitimate sons who were called "nephews" (*The Concise Oxford Dictionary*, ninth edition)."

5 Blanket bans on the hiring of relatives of existing staff mem-

bers (as opposed to the hiring of relations of staff to positions where one relative is exercising supervision over another) can be held to be in breach of human rights guarantees against discrimination.

6 Adv. Gary Pienaar, Office of the Public Protector, Republic of South Africa in *The Role of the Ombudsman In Fighting Corruption*, paper presented to the 9th International Anti-Corruption Conference, Durban, South Africa, 10 - 15 October 1999

Nepotism can cause conflicts in loyalties within an organisation, particularly where one relative is placed in a direct supervisory position over another. Fellow employees are unlikely to feel comfortable with such a situation, and it is one which should be avoided. An example of a legal prohibition reads:

No persons related as father, mother, brother, sister, uncle, aunt, husband, wife, son, daughter, son-in-law, daughter-in-law, niece, or nephew may be placed in a direct supervisory-subordinate relationship.<sup>7</sup>

Even worse, of course, would be a judge sitting in a case in which he or she had a financial interest, or where a relation or good friend was involved. In a civil case, the parties may be asked (in a case of doubt) whether they are content with the judge hearing the case, after he or she has explained the potential conflict to them. In a criminal case the judge should simply declare his illegibility and not sit.<sup>8</sup>

**“Patronage is a virtue... Nepotism is wrong...”**

In bygone African tradition patronage was, in some instances, regarded as a virtue rather than something to be shunned.

There is much to excuse nepotism. Any man rising to a place of importance in politics will be surrounded by relatives and friends looking confidently to him for patronage, the traditions of centuries leave them in no doubt that he will provide for the needed patronage, and that if jobs do not exist they will be created. The politician may grasp the constitutional idea himself, but it is difficult for him to explain to his kinsmen that his political career will be threatened and jeopardised, and that to pay the price may cost him to lose his job. Consequently the life of Ministers and other people of importance is made burdensome by nagging and increasing demands, as they find themselves entangled in the familiar net of family obligation. Of course governments all over the world, including Africa, have evolved and it is now globally accepted that nepotism is wrong.

C. J. K. Tanda, *University of Juba, Khartoum, Sudan, In “Nepotism and the Evolution of the Public Service in Apia: A critical review”*<sup>10</sup>

More marginal, perhaps, is the question which arises when the sons and daughters of judges appear in court before their parents. In some court systems this has caused no complications, but in others it has aroused fierce controversy and given rise to serious allegations of collusion and corruption.

Nepotism primarily involves one or more of the following:

- advocating or participating in, or causing the employment, appointment, reappointment, classification, reclassification, evaluation, promotion, transfer, or discipline of a close family member or domestic partner in a county position, or in an agency over which he or she exercises jurisdiction or control;
- participating in the determination of a close family member’s or domestic partner’s compensation;
- delegating any tasks relating to employment, appointment, reappointment, classification, reclassification, evaluation, promotion, transfer, or discipline of a close family member or domestic partner to a subordinate; and,
- supervising, directly or indirectly, a close family member or domestic partner, or delegating such supervision to a subordinate.<sup>9</sup>

**What is Cronyism?**

Cronyism is a broader term than nepotism, and covers situations where preferences are given to friends and colleagues. In Britain, cronyism is captured in the expressions “old school tie” or “old boys club”.

**Managing these conflicts**

It is essential that organisations have clearly stated and well understood policies and procedures as well as written codes of conduct to deal with actual, potential and perceived conflicts of interests, including nepotism and cronyism.

7 State of Indiana, USA: applicable law IC 4-15-7-1:  
 8 See, for example, the criticism of Lord Hoffman sitting on an appeal in which an organisation with which he had connections, though not financial ones, was involved. Pinochet v R, (House of Lords, UK). Legal folklore also tells of a judge who sat in a case involving his son and who tried to overcome his conflict of interest and show his impartiality by fining his son twice

the usual amount – but this, too, was hardly justice being seen to be done!  
 9 Board of Ethics, King County, USA.  
 10 Quoted in *Report on the Investigation of Allegations of Nepotism in Government: Report No 11 (Special Report)* to the Parliament of South Africa by the Public Protector of the Republic of South Africa, 15 April 1999.

However, the public interest requires that “only the best shall serve the state”. There will be occasions where a relative is unquestionably the best qualified person for a particular post, and there must be a balancing of interests. For this reason, nepotism rules should not be an insuperable barrier and mean that well-qualified candidates are invariably disqualified. This was written into the following formulation by the City of Bristol (USA)<sup>11</sup>:

The City of Bristol is interested in hiring able qualified applicants and will consider any person for employment when they meet qualifications. The City’s goal is to hire the most qualified applicant who is best suited for the position. Members of your family, members of your immediate household or your relatives will be considered for employment, except when:

- their position or your position would exercise supervisory, appointment, grievance adjustment, dismissal or disciplinary authority or influence,
- if you or the employee would audit, verify, receive or be entrusted with City money or City property,
- circumstances would exist making it foreseeable that the interest of the City and you or the employee would be in conflict or question,
- where the City must limit hiring to avoid a conflict of interest with customers, regulatory agencies, or others with whom the City conducts business, or
- where the City must limit hiring to avoid employment discrimination, personnel policy conflicts or related problems.

The City will not knowingly place you in a situation where you are supervised by a member of your family, your immediate household or your relative, or where favouritism, interpersonal conflict, lack of productivity, lack of efficiency, or other unsound employment conditions including those mentioned in this policy may develop. This policy shall not be retroactive, unless any of the above adverse conditions are being practised. In such a case, the City reserves the right to assign the affected employees to different operating levels, pay scales or locations.

Further, policies and procedures should address the need for and the means of disclosing and recording conflicts of interests and determining the appropriate action for minimising their impact on the integrity of an organisation’s operations.

### Avoiding nepotism and cronyism in the making of appointments<sup>12</sup>

The question of avoiding nepotism and cronyism in the awarding of public contracts is dealt with in the discussion of public procurement. There, such actions have created little short of mayhem in the management of the affairs of state.

Here, the discussion focuses on appointments to, and within, the public service, although the basic principles also hold good for much of the private sector.

#### “A new political scandal is rocking Ireland”

A new scandal emerged in Ireland today over assertions of corruption and nepotism at the highest level of government, plunging the country into a national debate.

The debate came after the disclosure of an official ruling that a former Prime Minister, Charles J. Haughey, owed no taxes on a \$2 million gift from a businessman and that the decision was made by a brother-in-law of the present Prime Minister, Bertie Ahern, whose political career was fostered by Mr. Haughey... The former Prime Minister has not been charged with any crime, but the investigation already under way is expected to answer the question on many minds: how did a man who spent his entire life in politics, at modest salaries, become a man of ostensible wealth?”

*New York Times, 17 December 1998*

#### Brazil keeps it in the family

Brazilian deputies have thrown out a bill that would have outlawed nepotism in government and congress. The proposed legislation aimed to curb the widespread practice among politicians of employing their relatives in well-paid positions. It would have prevented officials in any branch of government from hiring members of their family, through blood or marriage. But the proposal fell 22 votes short of the 308 it needed to pass - and 153 legislators voted openly against it. Inocencio de Oliveira, the veteran leader of the government-allied Liberal Front Party, called the idea an “aberration”. An informal survey by Chamber leaders showed that about 60% of the 513 legislators employed relatives.

“Relatives are human and defenceless creatures, not these monsters they’re made out to be,” deputy Gerson Peres said. Mr Peres, who has two family members working in his office, has proposed creating a quota system to limit the number of relatives public officials may employ.

The decision shocked a minority coalition of congressmen, who had hoped to pass the popular measure ahead of October municipal elections. “Hiring relatives is just like Roquefort cheese: it’s tasty but it smells bad,” said deputy Jose Roberto Battochio.

*BBC World Service, 17 March 2000*

11 City of Bristol, Tennessee, USA, Nepotism Policy, September 1996

12 This section draws on materials developed by the New South

Wales Independent Commission Against Corruption (NSW ICAC), Sydney, Australia. Its assistance in the preparation of these and other materials is gratefully acknowledged.

- *Impartiality* in all recruitment and selection processes is essential for public sector employees to meet their public duty by acting ethically and in the public interest. Therefore, to avoid perceptions of bias or corruption, a potential applicant should have no direct involvement in any part of the recruitment process for a job for which they may be a candidate. This includes acting as the contact person for potential candidates, framing advertisements or preparing the standard practice for preferred applicants' referees to be contacted. Each referee should be asked the same questions relating to the selection criteria and all the questions and responses should be documented.

It should be clear to all concerned precisely who is accountable for key decisions throughout the process, and what the values are that will be applied. This should be formally recorded, and all decisions and the reasons for those decisions during a selection process should be documented. As in all other aspects of sound administration, good record keeping increases accountability.

In societies where there are particular pressures from clans or a person's extended family, it is advisable for those involved in the decision-making processes to formally certify that none of the applicants is a relative or is known to them, or else to excuse themselves from the process entirely.<sup>13</sup>

- *Competition should be fostered.* Advertisements should be framed to both adequately reflect the requirements of the job and to maximise the potential field of applicants. Generally, advertisements should be placed to attract the widest potential field possible. Selection criteria should also be reviewed before recruitment action is taken to ensure they adequately reflect the requirements of the position and attract the widest field of applicants.

Only in exceptional circumstances should truly competitive measures be bypassed. Where this is done, the decision-maker must be able to demonstrate clear and unambiguous reasons for appointing directly.

- *Openness* - The risk of corruption is minimised where there are policies and procedures that promote openness in dealing with conflicts of interests.

An administration that adopts a policy of openness for all its recruitment and selection decisions will avoid sending the wrong message to staff about preferred practices in recruitment and selection. This will also remove the justification for others to act contrary to stated recruitment practices and policies without valid reasons. Openness, however, does not mean breaching confidentiality.

- *Integrity* - Taking shortcuts can compromise the integrity of the recruitment process. To ensure integrity in recruitment and selection practices, an administration must have clearly stated sanctions for non-compliance with established policies and practices and be seen to use them when necessary.

A number of countries have found that having independent persons involved in the selection process can markedly enhance the integrity of the process. These independent members should not be known to the other committee members. If this is not possible, the extent of the independent member's affiliation with other committee members should be recorded in writing before interviews are held and form part of the recruitment file.

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13 Such a system was developed for a time in Zimbabwe in the early 1980s. This involved a standard form which each member of an appointments board was required to sign, and which

included an undertaking that no approaches had been made to the member by any person in connection with the appointment under consideration.

- *Appeals* - Unsuccessful, but qualified applicants who consider that proper procedures have not been followed, should be able to appeal to an appropriate authority for an independent review of the process and its outcome.<sup>14</sup>

### Conflict of interest issues when staff leave the public sector<sup>15</sup>

Managing the separation process when a public servant leaves the public service and enters the private sector has become increasingly important when addressing conflict of interest issues.

This is a consequence of several factors. Efficiency reforms have led to “downsizing” and contracting out of certain public sector functions to the private sector. In many administrations fixed term contract employment for senior public officials has been introduced. At the same time there has been a convergence of management practices between the public and the private sectors; the essential qualifications required to work in both are now similar. As a consequence there has been a growing tendency in many countries for public officials not to regard public sector employment as a long-term career, but to consider moving between the public and private sectors in the course of their working lives.

To ensure that public administrators are not tempted by the prospect of jobs after retirement, a sound approach to post public sector employment is required. This both reduces the risk of corruption, and renders much less sensitive any confidential information which the retiring public servant may have and which competing private sector interests may be keen to obtain for themselves.

The type of employment which may be cause for concern is one which has a close or sensitive link with the person’s former position as a public official. If a public official misuses his or her official position to obtain a personal career advantage, whether intentionally or innocently, it adversely affects public confidence in government administration.

There are, perhaps, four main areas in post separation employment that give rise to situations of conflict of interest and that merit consideration:

- Public officials who modify their conduct to improve their post separation employment prospects. Such conduct can involve favouring private interests over public duty; individual public officials “going soft” on their official responsibilities to further personal career interests; an individual acting partially by over-identifying with prospective employers’ interests; or outright bribery, where a public official solicits post separation employment in return for a corrupt performance of duties.
- Former public officials who improperly use confidential government information acquired during the course of official functions for personal benefit, or to benefit another person or organisation. It does not involve the information that becomes part of an individual’s personal skills and knowledge that can be legitimately used to gain other employment.
- Former public officials who seek to influence public officials. This involves former public officials pressuring ex-colleagues or subordinates to act partially by seeking to

14 For some case studies, see the NSW ICAC publication *Best Practice, Best Person: Integrity in Public Sector Recruitment and Selection* on the Commission’s website.

15 The discussion in this section is based on a dialogue between

the NSW ICAC and public sector employers in that state. The full report is entitled *Corruption Prevention Publications: Strategies for Managing Post Separation Employment Issues* and may be accessed on the ICAC website.

influence their work or securing favours. This can happen in many ways, such as through informal contact, 'jumping the counter' to obtain government information, or lobbying.

- Re-employment or re-engagement of retired or redundant public officials. This may involve:
  - (a) senior public servants receiving generous redundancy compensation pay-outs and re-entering the public service in non-executive positions while keeping their full redundancy payments;
  - (b) public officials leaving public employment only to be re-engaged as consultants or contractors at higher rates of pay to perform essentially the same work; and
  - (c) public officials who decide to go into business and to bid for work from their former employer after arranging their own redundancies.

The use of codes of conduct is not generally an effective solution in this particular problem area. The codes cease to have effect when people leave office – the very moment when these provisions become relevant. This leaves three generally accepted approaches available:

- Each government agency can develop specific post separation policies, relevant to the degree of risk in this area and the likely impact of those policies on future careers, e.g. of highly qualified professionals with limited fields in which to work.
- Employment contracts can have specific restrictions written into them. (However, some countries limit the legal right to restrict future employment, and this can give rise to difficulties.)
- Enacting legislation is a route that some countries have taken<sup>16</sup>, but any legislation should be careful to minimise restrictions and not to impose them on people unnecessarily.

There is, of course, a need to ensure that restrictions on post separation employment are in proportion to the risks posed. For this reason, it was the view of public sector managers in the Australian state of New South Wales that the best approach is not one of blanket prohibitions, but one of dealing with these matters on a case by case basis. They did not consider that the level of risk to public sector integrity warranted the degree of hardship and inefficiency that broadly targeted public sector restrictions may impose. Views, of course, may differ elsewhere, but these are considerations to keep in mind.

### Some legal approaches

Given the complexities of the situations which can arise, the enactment of all-embracing laws in the area of conflict of interest can be something of a blunt instrument. Thus many countries have chosen to approach the more detailed aspects of the problem in a diffused, management-led fashion. In this approach, laws are enacted which deal with the upper levels of government (for example, as in the 1997 Constitution of Thailand quoted above) and with basic principles, while the design of appropriate policies is effectively delegated to agencies and departments, each of which is expected to develop policies appropriate to their own situations and needs. Even in the implementation of these policies a large measure of common-

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<sup>16</sup> The Canadian legislation is in the Best Practice section on the internet version of this Source Book: [www.transparency.org](http://www.transparency.org).



sense is called for, and the services of an Ethics Office can be particularly valuable.<sup>17</sup> Equally clearly, conflict of interest, cronyism and nepotism should be covered in appropriate codes of conduct.

By no means all countries have anti-nepotism laws. Where these are lacking, favouritism shown to a relative on the basis of relationship and other family member issues, tend to be dealt with by legal prohibitions such as those against unwarranted privilege, direct or indirect personal financial interest that might reasonably be expected to impair objectivity and independence of judgement, or the appearance of impropriety.

A typical example of a jurisdiction which does have a law reads:

IC 4-15-7-1, on Nepotism, "No person being related to any member of any state board or commission, or to the head of any state office or department or institution, as father, mother, brother, sister, uncle, aunt, a husband or wife, son or daughter, son-in-law or daughter-in-law, niece or nephew, shall be eligible to any position in any such state board, commission, office or department or institution, as the case may be, nor shall any such relative be entitled to received any compensation for his or her services out of any appropriation provided by law. However, this section shall not apply if such person has been employed in the same position in such office or department or institution for at least twelve (12) consecutive months immediately preceding the appointment of his relative as a board member or head of such office, department or institution. No persons related as father, mother, brother, sister, uncle, aunt, husband, wife, son, daughter, son-in-law, daughter-in-law, niece, or nephew may be placed in a direct supervisory-subordinate relationship."<sup>18</sup>

An example of such a law being explained in a policy manual is the following:

**SUBJECT: PERSONNEL**

**EFFECTIVE: November 19, 1999**

**Section: 603.3 Nepotism**

1. University system officers and employees shall comply with NDCC § 44-04-09, relating to nepotism. Accordingly, an officer or employee may not, except as permitted by law, serve in a supervisory capacity over, or enter into a personal services contract with, a member of the officer's or employee's immediate family.
2. When two or more members of the same immediate family are employed in the same department or institution, the head of the department or institution shall reassign responsibility for performance evaluations, salary recommendations, disciplinary actions and other supervisory authority as necessary in order to comply with NDCC § 44-04-09.
3. "Immediate family" means a parent (by birth or adoption), spouse, son or daughter (by birth or adoption), stepchild, brother or sister by whole or half-blood or adoption, brother-in-law or sister-in-law, or son-in-law or daughter-in-law. Upon offer and acceptance of employment, promotion or transfer to a different department, or upon change in family status implicating this policy, an employee must report in writing any actual or potential conflict with this policy to the employee's department or institution human resource officer.<sup>19</sup>

<sup>17</sup> Ethics Offices are discussed in the chapter on Public Service Ethics.

<sup>18</sup> State of Nebraska, USA.

<sup>19</sup> North Dakota State Board of Higher Education Policy Manual.

An example of a corporation's policy on nepotism reads:

#### Statements of Policy

1. This section sets forth the policy regarding Employment of Relatives (Nepotism) for all permanent and temporary employees at [the corporation].
2. We are committed to hiring and retaining highly qualified persons. At the same time, we recognise that, despite their qualifications, hiring and retaining close relatives of present employees might raise serious questions regarding the objectivity - or appearance of objectivity - of work assignments, performance appraisals and employee treatment. Our employment policies, administered on a case-by-case basis, are based on balancing these concerns.

#### Employment Rules

1. No [corporation] employee may cause the employment, appointment, promotion, reassignment, transfer, or advancement of a family member to a position in which the employee supervises or manages. Family member means an individual who is the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.
2. If an employee and family member work in the same office and one of them becomes a manager with supervisory influence over the other, as described above, a transfer will most likely be arranged. Also, if an employment arrangement may be perceived to violate our guidelines prohibiting family members from having supervisory influence over one another, a transfer may also be arranged. If a transfer is not feasible, the employees will have 30 days to decide which family member will stay employed. If the employees do not make the decision within the allotted period, [the corporation] will make the decision based upon the employment history and job performance of both employees, as well as [the corporation's] needs.
3. If two current employees marry, or live together in a spousal relationship though unmarried, they may continue in employment, but are subject to the conditions described in this policy.
4. Any waiver requests to this policy must be submitted, in writing, through the supervising vice president to the Director of Human Resources for approval.<sup>20</sup>

### Some indicators as to the effectiveness of conflict of interest, nepotism and cronyism rules

- Is there a national law setting out clearly principles which should govern a sound conflict of interest policy?
- Are public appointments made on merit?
- Do government agencies have clear policies in these areas? Are they widely understood by staff and by the public at large?
- Do officials have access to persons who can advise them on ethical issues such as those which arise in this area?
- Are there conflicts between modern governance in these areas and well-established cultural traditions? Is a mechanism provided for the resolution of these conflicts in ways which serve the public interest as a whole?
- Are there clear rules on post-separation employment which act as a check on corrupt practices?

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<sup>20</sup> The Citadel, Charleston, South Carolina, USA.:  
<http://www.citadel.edu/citadel/otherserv/hres/ppnepism.html>

Cronyism is the practice of partiality in awarding jobs and other advantages to friends or trusted colleagues, especially in politics and between politicians and supportive organizations. For instance, this includes appointing "cronies" to positions of authority, regardless of their qualifications; this is in contrast to meritocracy, in which appointments are made purely on qualification. Highlighting the appearance of "cronyism, nepotism, abuses of power, and conflicts of interest" in U.S. President Donald Trump's recent negotiations to rescue the failing Chinese telecom giant ZTE after Beijing dumped \$500 million into a major Trump development project in Indonesia, the watchdog group Common Cause sent a letter (pdf) to two key congressional committees on Thursday calling for a probe. into whether Trump is "abusing his office to enrich his family." "The office of the president is not intended for self-enrichment, but the president and members of t Cronyism is giving jobs and opportunities and political breaks and the like to friends and associates, often those who can return the favor with donations to or support of one's campaign and/or administration. Nepotism is giving jobs to family mem... Nepotism is giving jobs to family members. Both are seen as unfair if not corrupt because people are granted opportunity by virtue of connections and self-interest by the one granting the job or opportunity, not merit. For example, hiring your son or daughter rather than more qualified people would obviously seem unfair to the other applicants. Note that the practice is often perfectly legal, depending on the circumstances. Conflict of interest provisions should also be included in officials' employment contracts to facilitate disciplinary proceedings where necessary. Whatever form they take, regulating conflicts of interest is essential to the development of accountable and scrupulous procedures in decision making. Three major areas should be covered by conflict of interest regulation. Nepotism and cronyism. Instances in which an official influences the hiring of relatives and business associates or the provision of favours to them are clear conflicts of interest. While it is unreasonable to prohibit a public department from employing multiple members of the same family, circumstances in which an official is a direct subordinate of a relative should be avoided. Name of Policy: Conflict of Interest and Nepotism. Policy Number: 3364-25-18. Approving Officer: President. A conflict of interest exists if financial interests or other opportunities for personal benefit may exert a substantial and improper influence upon an employee's professional judgment in exercising any university duty or responsibility. Employees shall not use their positions to secure anything of value, financial gain, or personal benefit that would not ordinarily accrue to them in the performance of their.