

HKIA Feature Article
Case Study – Conflict of Interest in Contract Letting

Architects may from time to time encounter conflict of interest (CoI) situations when discharging their official duties, in particular in the course of contract letting. CoI arises when private interests of a person compete or conflict with the interests of his/her employers/clients or official duties. CoI is not a wrongdoing *per se*, however, mishandling or abuse of such conflicts could have adverse ramifications including leading to criminal offences (e.g. fraud). To raise HKIA Members' awareness so as to avoid them from falling prey to pitfalls of CoI, this article aims to highlight the common pitfalls of CoI situations in contract letting and provides suggestions on the declaration and management of CoI through illustration of the following case study.

Case in Perspective

Daniel was an architect of an architecture firm and was involved in tendering matters of building works contracts. He was responsible for, among other duties, drafting tender documents (e.g. specification) for the building works. According to the probity requirements set out in the firm's code of conduct for staff, Daniel was required to avoid CoI and declare any apparent or potential CoI to the firm when taking up his role in procurement (including preparation of tender documents). In a tender exercise, Daniel had specified in the tender documents brand names of certain building materials with the sole supplier being his brother's own company. Despite the CoI, Daniel had submitted a declaration of no CoI to the firm.

Legal Requirements

A person will commit an offence of fraud under S.16A of the Theft Ordinance (Cap. 210) if he/she, by any deceit and with intent to defraud, induces another person to commit an act or make an omission, which results either (a) in benefit to any person other than the second-mentioned person; or (b) in prejudice or a substantial risk of prejudice to any person other than the first-mentioned person. The maximum penalty for the offence is an imprisonment for 14 years.

Corruption Risk Analysis

In this case, Daniel had falsely represented that he had no CoI when discharging his official duties albeit that he was fully aware of the firm's requirements on the declaration of CoI. He could therefore commit an offence of fraud under the Theft Ordinance.

Preventive Measures

To ensure proper practices and abide by the laws, architects should –

- ✓ strictly observe the CoI requirements set out by the employers and/or clients;
- ✓ avoid CoI as far as practicable, and declare the CoI, if unavoidable, to the employers and/or clients;
- ✓ seek the employers' and/or clients' instruction on the follow-up actions to mitigate the declared CoI; and

- ✓ not misuse their position or abuse their power to make personal gains.

To reduce the risk of CoI in contract letting, architectural firms should –

- ✓ devise a mechanism for handling the declaration and management of CoI from staff, including but not limited to the following–
 - providing work-related examples of CoI situations and guidelines on managing CoI for reference by staff;
 - issuing a form to facilitate staff to make a written declaration and record the follow-up actions taken, where applicable; and
 - setting out procedures and schedule of authorities for handling the declaration forms and determining the follow-up actions to be taken.
- ✓ ensure staff are well aware of the CoI declaration and management requirements (e.g. laying down the requirements in a code of conduct or employment contract, circulating the requirements on a regular basis or when there are updates, and conducting periodic training).