



Guidelines on the Professional Ethics and Conduct of Public Servants

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Foreword

Commitment to the rule of law throughout the public administrative system and the integrity of the public servants are important foundations which guarantee quality service delivered to the citizens and which consolidate the prestige and good image of the government. The "comprehensive cultivation of a spirit of service of public servants" is the priority of the administrative reform of the Macao Special Administrative Region. Towards this end, the Commission Against Corruption, based on the existing laws and the problems frequently detected during case investigations, has compiled Guidelines on the Professional Ethics and Conduct of Public Servants and Recommendations on the Formulation of Code of Conduct for Public Services and Institutions. The objectives are to promote an ethical culture as well as to cultivate a spirit of service in the public service.

The Guidelines on the Professional Ethics and Conduct of Public Servants aims at the general public servants. It is written in simple and plain language accompanied by concrete examples so that the relevant legal provisions are easy to understand. Its objective is to assist public servants in understanding the provisions and its spirit so as to prevent them from committing malpractices in the exercise of their duties. Recommendations on the Formulation of Code of Conduct for Public Services and Institutions, on the other hand, is designed to provide the directors and the chiefs with a reference for formulating or complementing their internal regulations. Detailed explanations are given on the steps of formulation and application of the regulations. Departments/Institutions can make corresponding adjustments or lay special emphasis on some of the points according to their actual situations and particular characteristics, so that the regulations will better meet the needs

Foreword



Foreword



for managing the integrity of the staff.

I hope that these two publications on integrity will provide public servants, as well as the public, with an easier way to understand the legal system and the obligations related to the exercise of public functions. Through understanding the laws and abiding by them, the risk of violations by mistake can be minimized. In the meantime, it is also hoped that it will help to draw all public servants' attention to the importance of professional ethics. By establishing and adhering to their beliefs in integrity, all public servants serve with concerted efforts for the good of the public.

Cheong U

Commissioner Against Corruption

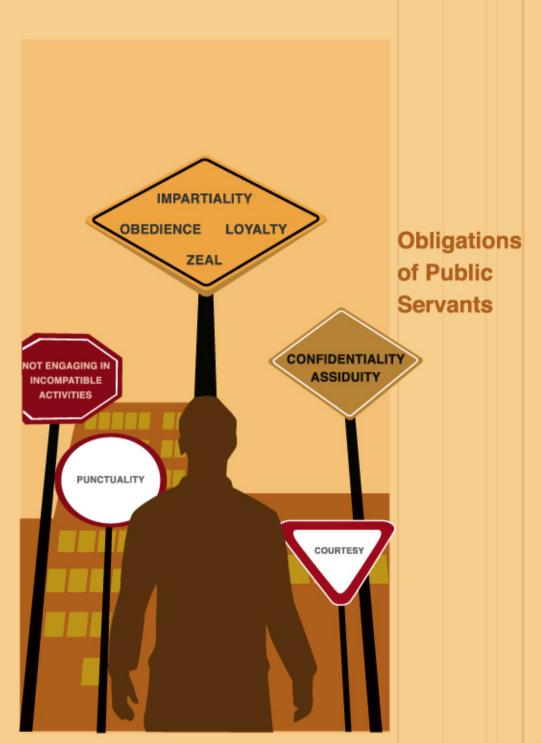


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Obligations of Public Servants



Obligations of Public Servants

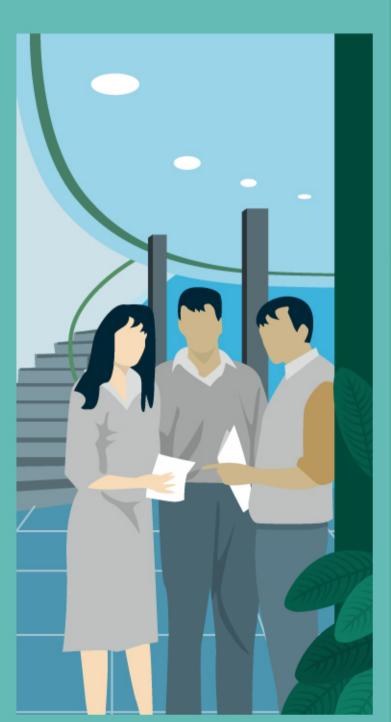
Legal provisions

Article 279 of the General Regulations Governing the Staff of the Public Administration of Macao specifies the general obligations of public servants, which include:

- Impartiality
- Obedience
- Confidentiality
- Assiduity
- Not engaging in incompatible activities
- Zeal
- Lovalty
 - Courtesy
 - Punctuality

Public servants' points to note

- Besides fulfilling their lawful obligations, public servants should pay attention to their personal conduct and avoid doing anything that may damage their personal integrity and bring their department/institution into disrepute.
- Public servants should be conversant with the legal provisions relevant to their official duties, such as the General Regulations Governing the Staff of the Public Administration of Macao, the Code of Administrative Procedure, the organizational law and other operational regulations of the department/institution, internal dispatches, orders and working procedures related to their duties. They should also keep themselves updated of the respective knowledge.





Conflict of Interest

What is conflict of interest

- Conflict of interest refers to conflict between the personal interests of a public servant and the interests of the government and of the departments/institutions.
- "Personal interests" include interests (both property and non-property interests) of a public servant, his family, relatives, friends, associations to which he belongs and those with whom he has either a hostile or an intimate relationship.

Problems arising from conflict of interest

- Conflict of interest may give rise to acts of corruption, fraud and abuse of power. Public servants shall always stay alert and take precautions to prevent any situations that may lead to actual or predictable conflict of interest.
- A public servant who abuses his power or violates the duties inherent in his functions, with the intent to seek illegitimate interests for himself or for a third party or to cause damage to another person, commits the crime of abuse of power.
 (For details, see Annex D Criminal Offences.)

Public servants' point to note

 A public servant should not take advantage of his official position to seek personal interests or interests for any relatives, friends or others, nor put them in an advantageous position over the others in their dealings with the department/institution.





1 See Article 347 of the Penal Code.



Examples

- 1. Public servant A is responsible for giving technical advice on the issuing of licences for commercial establishments. On handling an application, A discovered that one of the shareholders happened to be his brother-in-law. Later, A received a phone call from his brother-in-law, telling him that there were some requirements which the establishment did not meet and asked him to hide this fact when giving the technical advice. He promised A that he would make improvements to the establishment soon after starting the business. Should A accede to his brother-in-law's request?
 - Absolutely not. If A accedes to his brother-in-law's request, even if he has not accepted any advantage, he commits the crime of abuse of power and shall be subject to disciplinary liability.
 - In addition, once A learns that his brother-in-law is involved in the business, he is obliged to notify immediately his superior. Otherwise, even if he does not accede to his brother-in-law's illegal request, as he fails to report his legal impediment in accordance with the Code of Administrative Procedure, it constitutes a serious disciplinary offence and he shall be subject to disciplinary liability.
- 2. Public servant B takes part in the process of inviting tenders for a construction project of his department. One of his close friends intends to bid for the project and approaches him for advice. Can B give him some advice?
 - Yes, if the advice is merely on legal and general procedures. Even so, it is more appropriate to refer his friend to the formal consultation channels indicated in the tender invitation or the bidding regulations.



- B should pay special attention not to provide any advice on bidding strategies, techniques or proposals to ensure fair competition among bidders. Moreover, B should not release any contents of the proposals presented by other bidders, with the intention of assisting his friend to win the tender.
- If B thinks that his close friend's participation in the tender may land him in an embarrassing situation or others may cast doubt on his impartiality when treating this matter, he may ask his superior to exempt him from this job in accordance with the Code of Administrative Procedure.
- 3. C is in charge of assessing applications from associations/individuals for financial assistance. Can he handle the application from the association of which he is a member of the supervisory board?
 - To avoid being suspected of abusing power for personal gain, it is advisable for C to notify his superior and ask for recusal. His superior will then decide if it is necessary to assign another person to handle this application.

Legal liability

- According to the Penal Code, the maximum penalty for occupational crimes arising from conflict of interest is 8 years' imprisonment.
- According to the General Regulations Governing the Staff of the Public Administration of Macao, a public servant who violates the duty of impartiality is subject to disciplinary sanction up to and including dismissal.





Handling of Advantages Received

Legal provisions

- A public servant who, personally or through an intermediary, solicits or accepts an undue advantage for himself or for another person as a reward for performing or refraining from performing an act, no matter how much the value is and whether the act or the omission is in breach of his official duties, commits the crime of passive corruption, which does not rule out his disciplinary liability.
- Public servants shall not accept directly or indirectly any money or other advantages derived from the exercise of their official duties, which are undue according to the law. They should treat all citizens with objectivity and impartiality.
- If a public servant (or his spouse, lineal relative by blood or affinity) has accepted gifts offered by an interested person before or after the commencement of an administrative procedure, he should recuse himself from that particular procedure. Failure to do so constitutes a breach of official duties. (For details, see Annex B – Recusal System.)

What are advantages

"Advantages", whether in property or not, often refer to:

- Gifts
- Hospitality
- Commissions
- Discounts
- Transportation and accommodation

- Money
- Rewards
- Special offers
- Services

- See Articles 337 and 338 of the Penal Code.
- See paragraph 3 of Article 279 of the General Regulations Governing the Staff of the Public Administration of Macao.

 See c) of paragraph 1 of Article 50 of the Code of Administrative Procedure.

Principles to observe when handling advantages received

- Do not accept any advantages which are undue according to the law.
- Be conversant with the relevant legal provisions and the internal guidelines of the department/institution.
- Adhere to the principle of safeguarding the reputation of the department/institution and the integrity of personal conduct.
- Be vigilant, avoid being placed under the obligation of paying back favours in the exercise of official duties as a result of prior acceptance of advantages (even if not accepted in official capacity). Consider carefully the motives behind the offers and the possible consequences. Pay attention to the possibility that advantages may be offered with the intention of making one amenable to subsequent requests for favouritism.
- Avoid accepting any advantages offered by persons who have official dealings with your department/institution.
- In case of doubt, consult your superior immediately for instructions.

Handling of advantages received in the exercise of public functions

 If a public servant is offered gifts/souvenirs of symbolic value when attending official functions in official capacity, he may first accept the gifts/souvenirs for the sake of official courtesy. As the gifts/souvenirs are considered to be received on behalf of the department/institution, the public servant concerned should report and submit the gifts/souvenirs immediately to his superior for disposal. (For details, see Annex A - Sample of Report of Handling Souvenirs/Gifts Received in the Exercise of Public Functions.) Handling of Advantages Received





 When accepting hospitality in official capacity, a public servant should pay attention to its purpose, occasion, participants, nature and cost to see if it is a reasonable and appropriate offer. Food, drink and entertainment provided should be for immediate consumption. The hospitality accepted should not bring the department/institution into disrepute and the impartiality of the public servant should not be compromised in the discharge of official duties.

Handling of advantages received not in the exercise of public functions

- Avoid accepting unreasonably lavish or frequent hospitality offered by individuals who have official dealings with the department/institution to prevent trapping the department in embarrassing situations, bringing the public servant's impartiality into question and arousing suspicion from others.
- In case of customary gifts offered during festive seasons, attention should be paid to the ways and the occasions in which gifts or red packets are offered. Attention should also be paid to the value of the offers to see if they conform to common practices and social customs.
- Before accepting any special offers or discounts, consider first if such offers are universal, that is, whether other people under the same conditions will receive the same offers.



Examples

- Public servant A is responsible for procuring goods for the department. Can A accept free samples offered by a supplier?
 - If the free products offered by the supplier are intended for A himself, A should not accept them as it will be considered as an inappropriate acceptance of advantage and A could be subject to disciplinary liability.
 - If the offer is intended for the department and is merely a commercial promotion, A may first consult his superior for instructions. If the instructions given is that A can accept the products on behalf of the department, then A may accept them and submit them immediately to his superior for disposal.
- 2. Can public servant B accept the prize which he won in a lucky draw when attending an official dinner?
 - If it is considered inappropriate to decline participating in the lucky draw, B can return the prize for re-draw. If the actual situation does not allow the return of the prize, B may first accept the prize. He should report and submit it to his superior afterwards for disposal.
- 3. Can public servant C accept a supplier's invitation to attend a seminar in his private capacity with all the transportation and accommodation expenses borne by the supplier?
 - If the offer of this advantage represents a reward for favouritism practised by C in the discharge of his official duties, C should not accept it. Otherwise, the supplier and C commit the crime of active corruption and the crime of passive corruption respectively.



- If C is having a direct relationship with the supplier in official dealings (for example, C takes part in the selection of the supplier's bid in a procurement procedure), C should not accept the offer even if the supplier does not demand anything in return to avoid calling his integrity into question. In case of doubt, C should consult his superior for instructions.
- If C is not having a direct relationship with the supplier in official dealings, he should still take into consideration whether the acceptance of such an advantage would affect his impartiality and objectivity at work in the future and whether the reputation of the department would be damaged. He should also pay attention to the relevant internal guidelines and consult his superior when in doubt.

Legal liability

- According to the Penal Code, occupational crimes involving the acceptance of advantages are punishable by a maximum of 8 years' imprisonment.
- According to the General Regulations Governing the Staff of the Public Administration of Macao, a public servant who violates the duty of impartiality shall be subject to disciplinary sanction up to and including dismissal.



Outside Employment

Outside Employment



Outside Employment

Legal provisions

- Public servants perform their official duties on the "principle of exclusiveness". This means that public servants "serve exclusively the public interest" and they have the duty of "not engaging in incompatible activities". In other words, besides their official duties, they should not take up any other public positions or private practices without prior authorization.
- Public servants are permitted to take up concurrent public offices or positions only in the following exceptional cases
 - Inherent functions:
 - Professional training activities, which require prior authorization from the superior
 - Teaching activities, which require prior authorization from the superior and shall not exceed the limit of 11 hours per week[®];
 - Other situations considered conducive to public interest.
- Exceptions are made to public servants being permitted to engage in private practices when all the following requirements are met¹:
 - Previously authorized by the superior ¹⁰;
 - Not conflicting with the working hours of the public position;
 - Not compromising the duty of impartiality;
 - ♦ Not prohibited by special law.
- Public servants are prohibited from engaging in private practices on free-lance basis¹⁹ unless otherwise permitted by special law¹⁹.
- See paragraph 1 of Article 17, paragraph 1, i) of paragraph 2 and paragraph 11 of Article 279 of the General Regulations Governing the Staff of the Public Administration of Macao.
- See paragraph 2 of Article 17 of the General Regulations Governing the Staff of the Public Administration of Macao.
- See paragraph 4 of Article 17 of the General Regulations Governing the Staff of the Public Administration of Macao.
- 8 See paragraph 4 of Article 17 of the General Regulations Governing the Staff of the Public Administration of Macao.
- See paragraph 3 of Article 17 of the General Regulations Governing the Staff of the Public Administration of Macao.
 - See paragraph 4 of Article 17 of the General Regulations Governing the Staff of the Public Administration of Macao.
- Such as accountants, auditors, engineers, doctors, nurses and lawyers, etc.
- See paragraph 5 of Article 17 of the General Regulations Governing the Staff of the Public Administration of Macao.

Outside Employment



- Directors and chiefs are absolutely prohibited from engaging in private practices 13.
- According to the Law of Declaration of Incomes and Properties. public servants must declare all their outside positions. functions and activities which are remunerated or rewarded with property advantages 18.

Public servants' points to note

- Apply first for authorization in accordance with the law, whether the outside employment is a public position or a private practice.
- In case of any change in the content or the nature of the approved outside employment, take the initiative in notifying the superior and applying for new approval to ensure that it still conforms to the law.
- Whenever there is a change in the public position for example, change of post within the same department or transfer from one department to another - a public servant should take the initiative in applying again to his superior or new superior for authorization before continuing the outside employment to ensure that it still conforms to the law.

See paragraph 4 of Article 9 of Decree-Law no. 85/89/M, 14 See 4) of paragraph 3 of Article 2 of Law no. the General Regulations Governing the Directors and the Chiefs of the Public Administration of Macao.

^{11/2003,} Declaration of Incomes and Properties.

Outside Employment

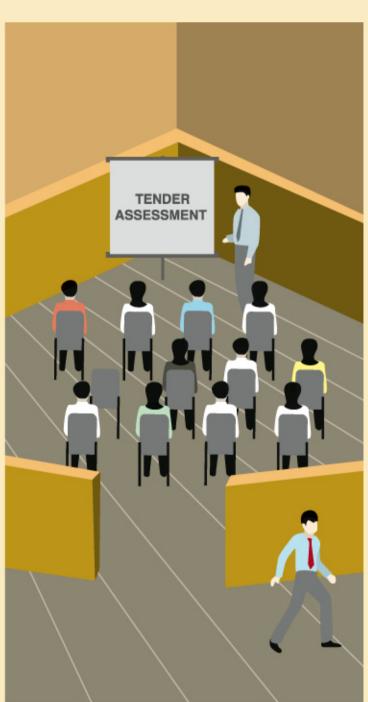


Examples of illegal outside employment

- Public servant A takes advantage of his outdoor work to engage in a multi-level marketing job.
- Public servant B, designer, provides designing service to private entities without prior authorization from the superior.
- Public servant C is an information technology officer. Without prior authorization from the superior, he establishes a computer company in his wife's name but he is the one actually running the business.

Legal liability

- According to the General Regulations Governing the Staff of the Public Administration of Macao, a public servant who violates the duty of not engaging in incompatible activities is subject to disciplinary sanction up to and including suspension.
- According to the Law of Declaration of Incomes and Properties, a public servant who provides inaccurate information shall be liable to a maximum fine equivalent to 1 year's remuneration of the position held. If a public servant intentionally declares inaccurate information, which is considered as making false testimony or declaration as prescribed in the Penal Code, he shall be liable to a maximum of 3 years' imprisonment or a fine. Moreover, the exercise of public offices or positions may be forbidden for up to 10 years.



Recusal System

Recusal System



Recusal System

What is recusal system

 Under the "recusal system", public servants are required not to participate in or handle administrative procedures or acts that may trap them in role conflicts. The objectives are to ensure that the administrative authorities and their staff carry out administrative activities with objectivity and impartiality and to avoid public servants falling into embarrassing and suspicious situations.

Legal provisions

- Mandatory recusal (For details, see Annex B Recusal System.)
 A public servant is legally impeded and cannot participate in an administrative procedure in certain situations prescribed by law, namely:
 - When a public servant or his spouse, lineal relative by blood or affinity[®], collateral relative up to and including the second degree by blood or affinity[®], or anyone living in common economy with the public servant has interest in the procedure;
 - When an interested person in the procedure or his spouse has taken a legal action against a public servant himself, his spouse or his lineal relative by blood;
 - When the procedure involves an individual who is a member of an association of economic or similar interests, to which a public servant also belongs.



- Such as parents, parents-in-law, stepparents, grandparents, sons and daughters, sons-in-law and daughters-in-law, grandchildren and their spouses, etc.
- Such as brothers and sisters, brothers-in-law and sisters-in-law, etc.

Recusal System



- Self-recusal (For details, see Annex B Recusal System.)
 When it happens that the situation may give rise to reasonable doubt about the impartiality and the integrity of a public servant in an administrative procedure, the public servant concerned should recuse himself from the procedure, namely:
 - When the procedure involves a public servant's lineal relative by blood or affinity, collateral relative up to and including the third degree by blood or affinity¹⁰;
 - When an interested person in the procedure is a creditor or a debtor of a public servant himself, of his spouse or of his lineal relative by blood or affinity;
 - When a public servant, his spouse or his lineal relative by blood or affinity has accepted gifts from an interested person either before or after the commencement of the procedure:
 - When an interested person in the procedure is either having an intimate or a hostile relationship with a public servant or his spouse.

Public servants' point to note

 A public servant, whether in the case of a mandatory recusal or a self-recusal, should notify his superior in accordance with the legal procedures. (For details, see Annex B – Recusal System.) Failure to report leads to disciplinary or even criminal liability.



17 Such as uncles and aunts, brothers and sisters of parents-in-law, nieces and nephews, etc.

Recusal System



Examples

- 1. A has been assigned as a member of the staff recruitment committee of her department. She discovers that one of the candidates is her sister-in-law. Can she continue to exercise her function as a member of the recruitment committee?
 - No, she cannot. As their relationship falls into the category of the "second degree of collateral relative by affinity", it constitutes a situation of "mandatory recusal" prescribed by law. Therefore, as soon as A learns about the situation, she should notify her superior in writing so that her superior can assign someone else to take charge. Failure to do so constitutes a serious disciplinary offence.
- 2. Public servant B is in charge of granting a licence and applicant C happens to be his girlfriend. Is it necessary for B to recuse himself from this particular job?
 - As they are "on very intimate terms", it constitutes a situation
 of "self-recusal" prescribed by law. Therefore, B should
 recuse himself and ask his superior to exempt him from that
 particular job. Failure to do so constitutes a breach of official
 duties and leads to disciplinary sanction.

Legal liability

 According to the General Regulations Governing the Staff of the Public Administration of Macao, serious disciplinary offences are subject to disciplinary sanction up to and including dismissal.



Duty of Confidentiality

Duty of Confidentiality



Duty of Confidentiality

Legal provisions

- Public servants should keep in professional confidence the nonpublic information acquired in the course of their official duties.
- A public servant who, without being duly authorized, discloses secrets which come to his knowledge in the course of official duties, with the intent to seek benefit for himself or for another person, or knowingly causing damage to the public interest or to a third party, commits the crime of violation of secrecy

Public servants' point to note

 Public servants should not release nonpublic information acquired or confided to them in the course of their duties or provided to them by virtue of their positions, nor should they make use of such information for improper purposes. Violation of the duty of confidentiality may incur not only disciplinary action but also criminal or civil actions taken by the authorities.

Examples of violation of secrecy

- Tipping off persons of planned raiding operations or enforcement actions, releasing information regarding the identity of raiders/law enforcement officers, the dates and the time of the actions, etc.
- 2. Releasing identity of the complainant during a raiding operation.
- Disclosing examination questions to a candidate participating in a competitive recruitment examination held by the department.
- Releasing to individual bidders sensitive tender information, such as internal selection criteria adopted by the department or quotations offered by other bidders.
- Disclosing to any private entity or individual the personal data of citizens held by the department.
- Releasing nonpublic information or documents of the departments/Macao SAR Government.

Legal liability

- According to the Penal Code, the crime of violation of secrecy is punishable by a maximum of 3 years' imprisonment or a fine.
- According to the General Regulations Governing the Staff of the Public Administration of Macao, a public servant who violates the duty of confidentiality is subject to disciplinary sanction up to and including dismissal.
- (8) See e) of paragraph 2 and paragraph 7 of Article 279 of the General Regulations Governing the Staff of the Public Administration of Macao.
- See paragraph 1 of Article 348 of the Penal Code.



Use of
Department /
Institution
Property
and Resources

Use of Department/Institution Property and Resources



Use of Department/Institution Property and Resources

Legal provisions

- Public servants should not, for their benefit or the benefit of another person, misappropriate public or private money or movable property entrusted to them, in their possession or to which they have access by virtue of their positions, otherwise they commit the crime of embezzlement.
- Public servants, when using or allowing the use of public or private vehicles or other movable property of considerable value entrusted to them, in their possession or to which they have access by virtue of their positions, should ensure that the property is used for the intended purposes. Failure to do so constitutes the crime of embezzlement by use⁶.
- Public servants should also use public money in accordance
 with the law. If public money is spent not on justifiable grounds
 of public interest and for a public purpose different from the one
 prescribed by law, it also constitutes the crime of
 embezzlement by use ²⁰.

Examples

- Embezzlement
- 1. Misappropriating money collected by the department.
- Taking possession of articles seized by the department during an operation of inspection.
- Embezzlement by use
- Borrowing a portable computer of the department for personal use without authorization.
- 4. A public servant, responsible for organizing an outdoor activity for his department, uses the money set aside for miscellaneous expenses of the activity to buy a new dehumidifier as the one allocated to him by the department has broken down.

Legal liability

- According to the Penal Code, the crime of embezzlement is punishable by a maximum of 8 years' imprisonment, while embezzlement by use is punishable by a maximum of 1 year's imprisonment.
- According to the General Regulations Governing the Staff of the Public Administration of Macao, a public servant who violates his official duties shall be subject to disciplinary sanction up to and including dismissal.
- See paragraph 1 of Article 340 of the Penal Code.
- See paragraph 2 of Article 341 of the Penal Code.
- See paragraph 1 of Article 341 of the Penal Code.



Legal Liability

Legal Liability



Legal Liability

Public servants' points to note

- If a public servant performs an act in breach of his official duties, the department/institution may institute a disciplinary proceeding against him, hold him liable for the act and apply a disciplinary sanction. The scale of disciplinary sanctions is: written reprimand, fine, suspension, compulsory retirement and dismissal. (For details, see Annex C Disciplinary Sanctions.)
- If a public servant commits a crime during the performance of his duties or by taking advantage of his official capacity, even though it does not involve any acceptance of advantages, he may be subject to disciplinary liability due to violation of such duties as zeal, loyalty and confidentiality, etc.
- If a public servant violates the criminal law, whether it is an occupational crime or a crime of other nature, he may be held criminally responsible.
- Disciplinary proceedings and criminal proceedings are mutually independent . If a public servant performs an act that violates disciplinary and criminal provisions simultaneously, he shall be subject to both disciplinary and criminal liability.

²⁹ See Articles 281, 300 and 318 of the General Regulations Governing the Staff of the Public Administration of Macao.

See Article 300 of the General Regulations Governing the Staff of the Public Administration of Macao.

⁸ See paragraph 1 of Article 287 of the General Regulations Governing the Staff of the Public Administration of Macao.

Common occupational crimes and crimes of other nature (For details, see Annex D - Criminal Offences.)

- Occupational crimes refer to crimes prescribed and punishable by the criminal law, committed by public servants who take advantage of their public positions or official capacity in the course of their duties to seek advantages for themselves or for a third party or cause damage to the interest of the public or of a third party.
- 2. Common occupational crimes:
- Passive Corruption (gist on page 12 and examples on page 15)
- Embezzlement (gist and examples on page 28)
- Embezzlement by use (gist and examples on page 28)
- Abuse of power (See Article 347 of the Penal Code)
 Example: Public servant A is responsible for selecting candidates in a competitive recruitment examination held by his department. During the selection process, he tries to favour a candidate, with whom he has close contact, by giving him a higher score unjustifiably so that this candidate will have a better chance of being recruited.
- Violation of secrecy (gist and examples on page 26)
- Favouritism practised by public servants (See Article 332 of the Penal Code)

Example: A law enforcement officer **B** discovers that someone has committed a crime in the discharge of his duties. In order to exempt the suspect from being punished, he intentionally neglects the criminal evidence and just let it vanish.

Legal Liability



Legal Liability



 Forgery committed by public servants (See Article 246 of the Penal Code)

Example: **C** is responsible for document registration. A material supplier has been a good friend of **C** for many years. In a public tender opened by the department for procurement of goods, **C**, being aware that it is against the rules to accept the proposal submitted by the referred supplier after the tender deadline, marks on the register that the supplier has presented the proposal before the deadline.

3. Other common crimes:

- Fraud (See Article 211 of the Penal Code)
 Example: D provides false information to his department with the intention of applying for family allowance and health care for his spouse who does not meet the legal requirements.
- Forgery (See Article 244 of the Penal Code)
 Example: E submits a false academic certificate to a certain department in order to be admitted to a recruitment examination held by that department.
- Usurpation of functions (See Article 322 of the Penal Code)
 Example: F, impersonating a police officer, stops a person and demands him to show his identification document.



Duty to Report and Relevant Channels

Duty to Report and Relevant Channels



Duty to Report and Relevant Channels

Legal provisions

- According to the General Regulations Governing the Staff of the Public Administration of Macao[®] and the Penal Procedure Code[®], public servants should report all the offences which have come to their knowledge in the course of their duties or by virtue of their positions even though they may not know the identity of the offenders. If the offences involve the use of official positions for personal gain, particularly if it is related to the acceptance and solicitation of advantages, they should report immediately to their superiors or to other competent entities (such as the Commission Against Corruption)[®].
- Those who fail to report the offences that they know, or they pretend that they do not know, are subject to disciplinary liability even though it does not involve offer or acceptance of any advantage. Failure to report for the purpose of either benefiting or prejudicing someone leads to criminal liability.
- "Ignorance of the law" is not an excuse for not fulfilling the duty to report since this act is in breach of the duty of "zeal" of public servants and leads to disciplinary liability

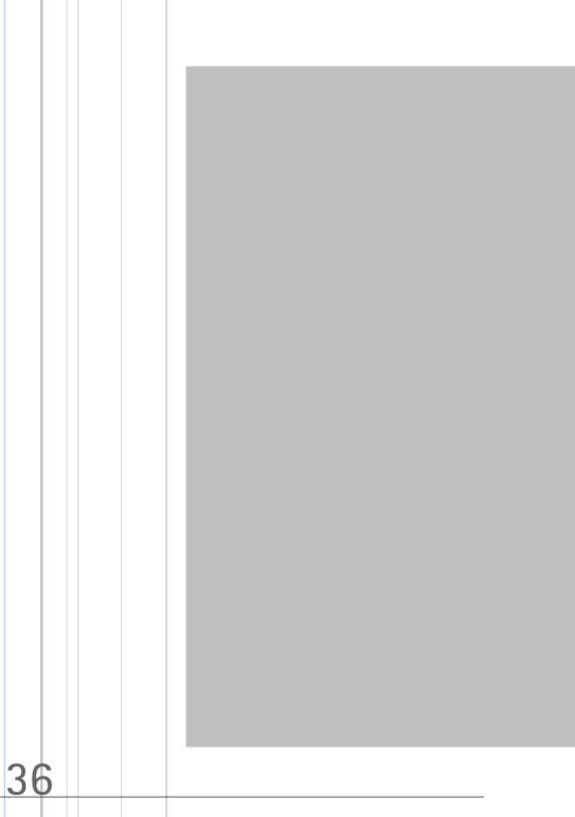
- See paragraphs 2 and 3 of Article 290 of the General Regulations Governing the Staff of the Public Administration of Macao.
- See paragraph 1 of Article 225 of the Penal Procedure Code.
- Public servants should report all the offences they know, even though such offences come to their knowledge in their private capacity, to fulfill their duty as a citizen.
- According to i) of paragraph 2 of Article 314 of the General Regulations Governing the Staff of the Public Administration of Macao, offenders are subject to disciplinary sanctions up to and including suspension.
- It constitutes the crime of prevarication as prescribed in Article 333 of the Penal Code.
- It means that public servants should "...exercise their duties with efficiency and zeal and should be particularly conversant with the laws, regulations and instructions from superiors..." (See paragraph 4 of Article 279 of the General Regulations Governing the Staff of the Public Administration of Macao).
- According to d) of paragraph 2 of Article 314 of the General Regulations Governing the Staff of the Public Administration of Macao, offenders are subject to disciplinary sanctions up to and including suspension.

Duty to Report and Relevant Channels



Public servants' point to note

- Whenever it comes to your knowledge any offence which is within the scope of activity of the Commission Against Corruption, whether it falls within the area of anti-corruption or ombudsman, you can report directly to the Commission Against Corruption through the following channels:
 - Report in person or by mail to:
 - Headquarters: Alameda Dr. Carlos d'Assumpção, Edf. "Dynasty Plaza", 14º Andar, NAPE
 - ▲ Branch Office: Rua 1° de Maio, nºs 68-72, Edf. U Wa, r/c, Areia Preta
 - 24-hour Hotline: 2836 1212
 - Telephone: 2832 6300 (Headquarters), 2845 3636 (Branch Office)
 - Fax: 2836 2336
 - E-mail: ccac@ccac.org.mo



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I, (name), exercising functions as		
(position, unit), received the	following souvenirs/gifts (see	
attachment) from	(name of entity/person) during	
the business trip to/reception	in/at(location) or	
(day) of (month) of	(year), for which I reques	
your instructions.		
Souvenirs/Gifts	Offerors	
(a)		
(b)		
(c)		
(d)		
(e)		
I hereby report as above.		
	Position	
	(Name of the reporting staff)	
	_(day)/(month)/(yea	

Annex A

I decide that:			
☐ Item is to be retained by the recipient.			
☐ Item is to be displayed in the department.	is to be displayed in the department.		
☐ Item is to be shared among the staff of the department.	is to be shared among the staff of the department.		
☐ Item is to be used for departmental gatherings.			
☐ Item is to be offered to an external entity			
(name of the entity).			
Others:			

Reporting procedure suggested:

- 1. The public servant reports to his superior and submits the gifts received or their photos;
- 2. The superior gives disposal instructions;
- 3. A copy of the report is to be given to the reporting staff while the original to be sent to the personnel unit or a designated unit for central filing.

Mandatory recusal

The law typifies all the 8 situations in which public servants are legally impeded from participating in administrative procedures or in acts or contracts of public or private law of the Administration. These situations are 44:

- a) When a public servant, himself or as an agent or a negotiorum gestor of another person, has interest in the relevant procedure, act or contract;
- b) When a public servant's spouse, any lineal relative by blood or affinity, collateral relative up to and including the second degree by blood or affinity, or anyone living in common economy with the public servant, whether himself or as an agent of another person, has interest in the relevant procedure, act or contract;
- c) When a public servant, himself or as an agent of another person, has interest in a similar question or when such a situation happens to the person included in b) above;
- d) When a public servant has participated in the procedure as an expert or a mandatary, or has given opinion on the question to be solved;
- e) When a public servant's spouse, lineal relative by blood or affinity, collateral relative up to and including the second degree by blood or affinity, or anyone living in common economy with the public servant, has acted as an expert or a mandatary in the relevant procedure;
- f) When an interested person or his spouse has taken legal action against a public servant himself, his spouse or his lineal relative by blood;
- g) When the appeal is against the decision made by a public servant himself or any person stated in b) above, or when anyone of them has participated in the making of the decision;
- h) When the case involves an individual who is a member of an association of economic or similar interests, to which a public servant also belongs.

De facto prerequisite

- Public servants here refer to holders of public office or staff of the public administration.
- See paragraph 1 of Article 46 of the Code of Administrative Procedure.

Self-recusal

Requested recusal

In circumstances which give rise to reasonable doubt about the impartiality and the integrity of a public servant, the grounds for self-recusal or requested recusal may be formed. The law prescribes 4 examples of such circumstances³⁵:

- a) When a public servant's lineal relative by blood or affinity, collateral relative up to and including the third degree by blood or affinity, or person for whom a public servant or his spouse acts as a guardian or a curator, whether himself or as an agent of another person, has interest in the relevant procedure;
- b) When a public servant, his spouse or any of his lineal relatives by blood or affinity is a creditor or a debtor of a natural or a legal person who has direct interest in the relevant procedure, act or contract;
- c) When a public servant, his spouse or his lineal relative by blood or affinity
 has accepted gifts from an interested person either before or after the
 commencement of procedure;
- d) When a public servant or his spouse is having a hostile or an intimate relationship with a person who has direct interest in the procedure, act or contract.

Mandatory recusal

Initiated by public servant himself

Initiated by a third party

When a public servant finds himself in a situation requiring mandatory recusal, he is obliged to notify immediately (in writing or by written record ³⁶) his superior or the president of the collegiate body ³⁷.

Any interested person 38 who has knowledge that a public servant is in a situation requiring mandatory recusal can request the Administration, in writing and with the respective reasons specified, to declare the public servant's recusal 39.

Superior or president of the collegiate body

Petitioner

Once the cause for mandatory recusal is verified ⁴², recusal should be declared and the situation be recorded in accordance with the law ⁴³.

- For example, meeting minutes.
- See paragraph 1 of Article 47 of the Code of Administrative Procedure.
- Refers to anyone whose interests may be impaired due to favouritism practised by a public servant.
- See paragraph 2 of Article 47 of the Code of Administrative Procedure.
- See paragraphs 1 and 2 of Article 51 of the Code of Administrative Procedure.
- See paragraph 2 of Article 50 of the Code of Administrative Procedure.

Annex B

Self-recusal

Initiated by public servant himself

A public servant should ask for recusal from participating in the respective procedure (request is to be made orally, but the superior or the president of the collegiate body can decide if the request is to be in writing).

Requested recusal

Initiated by a third party

Any interested person who considers that a public servant's relationship with himself or with another person may impair the impartiality of the public servant can object, in writing and with the respective reasons specified, to the public servant's participation in the procedure ⁴¹.

When it is verified that the circumstances may give rise to reasonable doubt about the impartiality and the integrity of a public servant (e.g. participation of a third degree collateral relative by blood, such as uncle and nephew; someone with debt disputes or old family friend), recusal of the public servant is to be declared (with the respective reasons recorded), thus impeding him from participating in the relevant procedure ⁶⁶.

When the existing relationship (e.g. ordinary friends) is not considered as a legitimate reason to cast doubt on the impartiality of a public servant, it can be decided that the referred personnel continues his participation in the procedure (with the respective reasons recorded) 6.

- 42 According to paragraph 2 of Article 46 of the Code of Administrative Procedure, if a public servant's participation involves merely task processing, particularly the acts of issuing certificates, it is not to be considered as a case of mandatory recusal.
- See paragraphs 3 and 4 of Article 47 of the Code of Administrative Procedure.
- See paragraph 3 of Article 51 and Article 52 of the Code of Administrative Procedure.
- See paragraph 3 of Article 51 and Article 52 of the Code of Administrative Procedure.

Scale of disciplinary Targeted act or fact sanctions 46 Minor offences that have not caused damage Written reprimand or disrepute to the department. Offences originating from negligence and misunderstanding of official duties, particularly: a) Failing to report to the competent authorities offences which come to their knowledge in the course of their duties: b) Defective performance and ignorance of Fine legal provisions, regulations or superior's orders: c) Engaging in private practices personally or through an intermediary without prior authorization. The sanction of suspension from 10 to 120 days or from 121 to 240 days is applicable to offences that reveal fault and gross indifference to the fulfilment of official duties. The sanction of suspension from 10 to 120 days is applicable mainly to the following offences: a) Showing lack of knowledge of essential Suspension rules regulating the department and causing prejudice to the Administration or to third parties; b) Showing up in gambling establishments in situations other than those permitted by law and having been previously punished for the same offence.

- See Articles 300 to 315 of the General Regulations Governing the Staff of the Public Administration of Macao.
- 40 According to paragraph 3 of Article 300 of the General Regulations Governing the Staff of the Public Administration of Macao, disciplinary sanctions should be recorded in the personal file of the public servant.
- See paragraph 1 of Article 300 of the General Regulations Governing the Staff of the Public Administration of Macao.

Annex C

Consequences

Being reprimanded.

Being obliged to pay a certain amount of money.

Being suspended from work during the sanction period.

The sanction of suspension from 10 to 120 days implies:

- a) Prohibition from exercising duties or functions, with suspension of respective employment relationship;
- b) Loss of the right to have those days of suspension counted for the purpose of remuneration, seniority and retirement;
- Loss of the right to enjoy annual leave for 1 year, counting from the end of the sanction period.

Scale of disciplinary Targeted act or fact sanctions The sanction of suspension from 121 to 240 days is applicable mainly to the following offences: a) Making false declarations to justify absences from work: b) Favouring certain individuals, enterprises or organizations; c) Failing to report to the competent authorities serious offences subordinates. knowledge in the course of their duties: d) Disclosing confidential facts or documents regarding the departments or the Administration. The sanction of suspension from 241 days to 1 year is applicable to offences that reveal fault and gross indifference to the fulfilment of official Suspension duties and that seriously damage the dignity and prestige of the public office holders or the official positions. Such offences mainly include: a) Receiving funds, collecting revenues or fees without reporting the accounts within the legal period; b) Breaching, with blunder or malice, the duty of impartiality in the course of official duties; c) Taking up public positions or offices concurrently, or engaging in private practices personally or through an intermediary, in situations prohibited by law; d) Making false declarations in disciplinary proceedings;

committed

to their

which come

functioning

e) Using or allowing the use of any property of the Administration, entrusted to their possession or use, for unintended purposes.

Annex C

Consequences

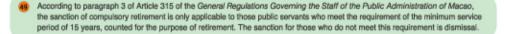
The sanction of suspension from 121 to 240 days implies:

- a) Same effects as the sanction of suspension from 10 to 120 days;
- b) Prohibition from promotion along the career path for 1 year, counting from the end of the sanction period;
- c) The possibility of being assigned to work in a different unit of the same department after resumption of duties.

The sanction of suspension from 241 days to 1 year implies:

- a) Same effects as the sanction of suspension from 10 to 120 days;
- b) Prohibition from promotion along the career path for 2 years, counting from the end of the sanction period;
- c) The possibility of being assigned to work in a different unit of the same department after resumption of duties.

Scale of disciplinary Targeted act or fact sanctions Offences which lead to termination of employment relationship are particularly: a) Accusing any public servant, by means of falsity or falsification, which leads to unfair punishment on him; b) Violating the duty of professional secrecy or revealing confidential information, which causes material or moral damage to the Administration or to a third party: c) Taking advantage of public positions to accept illicitly or solicit directly or indirectly gifts, rewards, profit shares or other property advantages, even though the purpose is not to accelerate or delay any work or document processing; d) Participating illicitly in the offer or Compulsory negotiation of public employment; retirement / Dismissal e) Embezzling or misappropriating public funds: f) Taking part, directly or through an intermediary, in any contracts made or to be made with any entity or department of the Administration or seeking interests from such contracts: g) With the intent to obtain any illicit benefit for themselves or for a third party, failing to fulfil official duties by not carrying out the proper procedures in time or causing damage, in whole or in part, in a legal act or by a purely material act, to the property interests entrusted to administer, monitor, safeguard or realize.



Annex C

Consequences

Compulsory retirement:

- a) Imposition of the status of retirement;
- b) Immediate removal from work, receiving the respective retirement pension only 18 months after being notified of the sanction.

Dismissal:

- a) Definite removal from work, with the employment relationship terminated;
- b) Loss of all the rights.

Definition Type of crime A public servant who, personally or through an intermediary, with his consent or ratification, solicits or accepts for himself or for a third party an undue **Passive** advantage or a promise of such an advantage, corruption whether in property or not, as a reward for acting or refraining from acting contrary (or not contrary) to his official duties. A public servant who, for his benefit or the benefit of another person, illegitimately appropriates or Embezzlement 5 encumbers public or private money or any movable property entrusted to him, in his possession or to which he has access by virtue of his position. A public servant who uses (or allows another person to use), for unintended purposes, vehicles or other movable property (public or private) of considerable value entrusted to him, in his possession or to which Embezzlement he has access by virtue of his position; or a public by use 52 servant who spends public money not on justifiable grounds of public interest and for a public purpose different from the one prescribed by law. A public servant who, in a legal act in which he participates by virtue of his position, damages the property interest for which he has the duty to administer, monitor, safeguard or realize, with the Illicit financial intent to seek illicit gain for himself or for a third party; or receives property advantage for himself or for participation in another person in a civil juristic act or in acts of public affairs 53 collection, liquidation or payment in which he participates by virtue of his position, even if no damage is caused to the inherent interests of his functions.

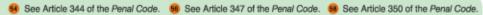
- See Articles 337 and 338 of the Penal Code.
- 51 See Article 340 of the Penal Code.

- See Article 341of the Penal Code.
- See Article 342 of the Penal Code.

Annex D

Characteristics	Penalty
Seeking illegitimate benefit for oneself or for another person.	Up to 8 years' imprisonment.
Misappropriating or encumbering money or movable property being entrusted, prejudicing public interest or public/private property.	Up to 8 years' imprisonment.
Using money or movable property improperly, even if it is used for public purpose and without benefiting oneself or another person, nor causing prejudice to the public interest or property.	Up to 1 year's imprisonment or fine.
Seeking or accepting illegitimate benefit for oneself or for another person, regardless of whether it causes damage to the public interest or property or not.	Up to 5 years' imprisonment.

Type of crime Definition A public servant who, in the exercise of his functions or de facto powers inherent in such functions, personally or through an intermediary, with his consent or Concussion ratification, collects property advantage (particularly taxes, charges, fees or fines) which is undue or exceeding the amount due for himself, for the Macao SAR or for a third party by misleading the victim or taking advantage of the victim's error. A public servant who, having received legal requisition from a competent authority to provide proper Refusal of cooperation in a judicial activity or to any public cooperation department, refuses to cooperate or does not cooperate without any legitimate reason. A public servant who, in cases other than those prescribed in Articles 337 to 346 of the Penal Code, abuses his powers or violates the duties inherent in his Abuse of power functions, with the intent to seek illegitimate benefit for himself or for a third party or to cause damage to another person. A public servant who, without being duly authorized, discloses secrets acquired or confided to him in the Violation course of his duties, or provided to him by virtue of his of secrecy position, with the intent to seek benefit for himself or for another person, or with the knowledge of causing damage to the public interest or to a third party. A public servant who illegitimately abandons or Desertion neglects his official duties with the intent to hamper or of duties 58 interrupt public service.



See Article 346 of the Penal Code. 69 See Article 348 of the Penal Code.

Annex D

Characteristics	Penalty
Prejudicing the interest of a third party and disturbing unjustifiably the normal function of judicial or administrative activity, even if there is no intent to seek illegitimate benefit for oneself or for another person.	Up to 8 years' imprisonment.
Disturbing unjustifiably the normal function of judicial or administrative activity.	Up to 1 year's imprisonment or fine.
Seeking illegitimate benefit for oneself or for another person or trying to prejudice the interest of a third party by abusing one's powers or violating one's official duties.	Up to 3 years' imprisonment or fine.
Disclosing confidential information to seek illegitimate benefit for oneself or for another person, or knowingly causing damage to the public interest or to a third party.	Up to 3 years' imprisonment or fine.
Disturbing unjustifiably the normal function of judicial or administrative activity.	Up to 1 year's imprisonment or fine.

Type of crime Definition A public servant who participates in or has the competence to participate in a proceeding, or has the competence to order the execution of a sentence or security measure, or takes charge of executing either one of them, totally or partially hampers, frustrates or Favouritism deludes probative or preventive activity of competent practised by authority, with the intent or knowledge that this act will public servants save another person who has committed a crime from punishment or a security measure; or who helps another person with the intent or knowledge of hampering, frustrating or deluding, totally or partially, the execution of a sentence or security measure, which has been applied to that person. A public servant who, in the scope of preliminary investigation or judicial proceedings, disciplinary proceedings or proceedings of other nature, with the Prevarication knowledge that it is against the law, promotes or does not promote, commands, decides or does not decide, or exercises the powers inherent in his position, with the intent to prejudice or benefit someone. A public servant who, in the exercise of his duties and with the intent to cause damage to a third party or to the Macao SAR, or to seek illegitimate benefit for himself or for another person, makes false documents, falsifies or alters documents, or abuses the signature of another person to make false documents; or registers Forgery on documents a falsified fact which is legally relevant; committed by or uses the above-mentioned documents fabricated. public servants falsified or altered by another person; or omits on a document, to which the law attributes public faith, the fact that this document intends to certify or authenticate; or inserts an act or a document in official correspondence registers, records or books without following the legal formalities.







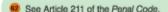
See Article 332 of the Penal Code. 60 See Article 333 of the Penal Code.



61 See Article 246 of the Penal Code.

Characteristics Penalty Benefiting another person illegitimately by not fulfilling one's duties in accordance with the law, disturbing Up to 5 years' imprisonment. unjustifiably the normal function of judicial or administrative activity. Not fulfilling one's duties in accordance with the law, with the objective to Up to 8 years' imprisonment. prejudice the interest of a third party or to seek illegitimate benefit for another person. Falsifying documents or any relevant elements in documents, with the intent Up to 5 years' imprisonment. to cause prejudice to a third party or to the Macao SAR or to seek illegitimate benefit for oneself or for another person.

Type of crime Definition Any person who, with the intent to seek illegitimate benefit for himself or for a third party, through error or deceptively twisting facts, misleads another person to perform acts which cause property damage to that or another person. Any person who, with the intent to cause damage to a third party or to the Macao SAR, or to seek illegitimate benefit for himself or for a third party, makes false documents, falsifies or alters documents, or abuses the Forgery 63 signature of another person to make false documents; or registers on documents a falsified fact which is legally relevant; or uses the above-mentioned documents fabricated, falsified or altered by another person. Any person who, without being duly authorized, performs official duties or acts of a public servant or public security force and claims expressly or tacitly to have such capacity; or engages in a profession for Usurpation which certain qualifications or conditions are required of functions by law, and though not meeting those requirements, claims expressly or tacitly to have the qualifications or the conditions required; or continues to exercise official duties even after being officially notified of his dismissal or suspension.







Annex D

Characteristics

Seeking for oneself or another person illegitimate benefit, deviously suggesting facts that lead someone to perform acts which cause property damage to that or another person.

Penalty

Up to 10 years' imprisonment.

Falsifying documents or any relevant elements in documents, with the intent to cause damage to a third party or to the Macao SAR, or to seek illegitimate benefit for oneself or for another person.

Up to 3 years' imprisonment or fine.

Performing acts inherent in public functions or other specific functions without possessing the legitimacy, statute, authorization or conditions legally required.

Up to 2 years' imprisonment or fine.

Guidelines on the

Professional Ethics and Conduct

of Public Servants

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