

**Subject:**

Inquiry of your Agency regarding the applicability of Article 71 of the Civil Code to contract validity in case of violations of Article 9 of the Act on Recusal of Public Servants Due to Conflict of Interest (hereinafter referred to as “This Act”) caused applications for lease (purchase) and outsourcing by public servants or related parties of agencies of the Executive Yuan or the Ministry of Finance in charge of legislators, Control Yuan members, and monitoring of domestic production from your agency, subordinate offices, or sub-agencies and calculation of the statute of limitations pursuant to Article 15 of this Act. Please take note of detailed explanations provided below.

**Description:**

1. Handling of relevant matters in accordance with Official Letter No. 10100698430 issued on May 30, 2013 and reply to Official Letter No. 10140022251 issued on October 22, 2012.
2. Article 71 of the Civil Code stipulates that “A juridical act which violates an imperative or prohibitive provision of the act is void except voidance is not implied in the provision.” In line with the imperative nature of applicability of laws, there are mandatory and discretionary provisions. Mandatory provisions are applicable regardless of the intent of involved parties. This includes imperative and prohibitive provisions that have mandatory applicability and validity. The term “imperative provision” refers to provisions that prescribe a certain type of conduct, while the term “prohibitive provisions” refers to provisions that prohibit a certain type of conduct. Prohibitive provisions can be further divided into banning provisions and effectiveness provisions. In case of violations of the former, juridical acts are still valid. In case of violations of the latter, juridical acts are void. Official letter No. 10000050250 and No. 10100698430 issued by this Ministry on January 3, 2012 and May 30, 2013 may be cited as reference.
3. The legislative intent of this Act lies in the promotion of political integrity and uprightiness as well as the establishment of regulations prescribing recusal by public servants in case of conflicts of interest, and effective prevention of corruption and conveyance of unjust interests. The legislative intent of Article 9 of this Act lies in the prevention of utilization of unfair advantages generated by the acquisition of insider information by public servants or their relatives in the contracting of public projects or government agency transactions. The Act therefore, prohibits transactions by the public servants or related persons with the organ with which the public servant serves or the organs under his supervision to eliminate collusion between the public and private sector and

conveyance of unjust interests. In case of violations of the prohibitive provisions set forth in Article 9 of this Act, Pursuant to the regulations set forth in Article 15 of this Act, a penalty equivalent to 100% to 300% of the transaction amount shall be imposed. These penalties have a deterrent effect and deprive violators of their improper gains. The legislative intent of this Article can therefore, be achieved without voiding of transactions.

Indiscriminate voiding of transactions has an excessive impact and violates legal stability principles. As for the validity of transactions in violation of the regulations set forth in Article 9, this Act does not prescribe that all contracts in violation of said regulations shall be considered invalid. The validity of such transactions shall be determined pursuant to relevant provisions set forth in the Civil Code.

4. Your agency inquired whether the contract concluded between said public servant or related persons and your agency on January 13, 2012 shall be considered invalid based on private law autonomy and freedom of contract principles where violations of Article 9 of this Act exist after contract conclusion, issuance of transfer of title certificate, or completion of transfer and registration. This matter shall be determined by the authority of the agency in charge in consideration of the extent of infringement of rights, fairness and integrity principles, the legislative spirit of the Act on Recusal of Public Servants Due to Conflict of Interest, and equitable rights and interests of both contract parties. The case cited in the Official Letter issued by your Agency on January 13, 2012 is a rental and sale case with an affidavit from the applicant. The provisions set forth in this Act are therefore not applicable. This Ministry respects your opinion that the concluded contract should be considered void and the violating party shall be liable for compensation of losses if false information has been provided.
5. Paragraph 1, Article 27 of the Administrative Penalty Act stipulates that the “Administrative penalties may only be imposed within three years upon violations”. Article 9 of this Act regulates private law transactions, the time of occurrence of such transactions shall be based on contract conclusion. The statute of limitations for the right to impose penalties shall be calculated starting from the contract conclusion date. The petition right period you referred to in your letter is a misunderstanding on your part.