

Subject:

Inquiry regarding the identification of managers as defined in Clause 4, Article 3 of the Act on Recusal of Public Servants Due to Conflicts of Interests (hereinafter referred to as "This Act") in an official letter submitted by your Department.

Description:

1. Reply to Official Letter No. XX issued by your Department on March 22, 2017
2. Where public servants, their spouses, or family members living under one roof, or relatives by the second degree of kinship serve as CEO, director, supervisor, or manager of a for-profit enterprise they shall be considered related persons of the public servant as defined in Article 3, Clause 4 of this Act. According to Paragraph 1, Article 553 of the Civil Code, managers as referred to in this Clause are authorized by businesses, manage their affairs, and serve as their signatories. Conveyed management powers may be limited to management of part of the affairs and managers are authorized to manage the affairs of the company within the scope of authority as defined in the Articles of Incorporation or contracts. These powers are effective without the requirement of registration. This is clearly stipulated in Paragraph 3, Article 553 of the Civil Code and Article 12 and 31 of the Company Act.
3. The legislative intent of Article 3 of this Act is based on the fact that spouses of public servants, or family members living under one roof, or relatives by the second degree of kinship serve as CEO, director, supervisor, or manager of a for-profit enterprise have a close financial relationship with the public servant and it is therefore necessary to define them as related persons of the public servant. This definition shall apply regardless of the actual duties and responsibilities of the CEO, director, supervisor, or manager in said enterprise and their involvement in transactions and procurement operations of the enterprise. Verdict No. 156 (2011) of the Taipei Supreme Administrative Court may be cited as reference.
4. In summary of the above, the inquiry of your Department regarding whether or not the chief editor of the Editor Center of the News Department of XXCompany should be considered a manager of said company and therefore a related person of XXX in your government should be determined based on the details of the actual case with reference to the aforementioned regulations and applicability of Article 9 of this Act.
5. Where a conflict of interest is verified, XXX in your government shall recuse himself immediately pursuant to the regulations set forth in Article 6 and Paragraph 1 of Article 10 of this Act. The fulfillment of the recusal obligations by the public servant shall however not exempt the related person from the

requirement of refraining from transactions as stipulated in Article 9 of this Act.