

Fair Trade Commission Directions on Procedural Rules of Recusal

Approved by the 472nd Commissioners' Meeting on November 23, 2000
Promulgated by Order (89) Kung Fa Tzu No. 04039 on December 8, 2000
Amended by the 1057th Commissioners' Meeting on February 8, 2012
Promulgated by Order Kung Fa Tzu No. 1011560332 on March 13, 2012 and
made retroactive to February 6, 2012
Amended by the 1227th Commissioners' Meeting on May 13, 2015
Promulgated by Order Kung Fa Tzu No. 1041560436 on May 15, 2015

1. These Rules are enacted by the Fair Trade Commission (hereinafter referred to as "the Commission") for governing the matter of its public servants' recusal in order to secure the objectiveness and fairness of the administrative procedures so as to enhance the people's reliance on the decisions of the Commission.
2. These Rules shall apply to those who handle cases according to the Fair Trade Law and related regulations of the Commission and have an impact on the substance or procedures of specific cases either in investigation or in deliberation process.
3. In any of the circumstances stated in Article 32 of the Administrative Procedure Act, the personnel of the Commission shall recuse himself/herself from the administrative procedure when handling specific cases.
Commissioners shall also voluntarily recuse themselves if there is likelihood of obtaining interests by themselves or their related persons either directly or indirectly through any act or omission in the course of performing their official duties.
The term "related persons" referred to in the preceding paragraph is hereby defined as follows:
 - (1) The spouse of a commissioner or the family members living together with the commissioner.
 - (2) Relatives of the commissioner by the second degree of kinship.
 - (3) Trustees of the trust property consigned by the commissioner or his/her spouse.
 - (4) Any profit-seeking enterprise in which the commissioner and the persons specified in above subparagraph 1 and 2 hold the post as CEO, director, supervisor, or manager.
4. If any of the circumstances as specified in Point 3 hereof occurs, the commissioner shall describe the facts and reasons for recusal.

5. In any of circumstances as specified in Paragraph 1, Article 33 of the Administrative Procedure Act, or the circumstance of conflicts of interest as stipulated in Paragraph 2, Point 3 hereof has occurred, the party may apply to the Commission for disqualifying the personnel or the commissioner involved in a particular case. Where the commissioner mentioned in the preceding paragraph refers to the chairperson of the Commission, the application for recusal shall directly sent to the Executive Yuan.

The party who makes the recusal application shall provide a statement of grounds and facts of the application that shall be duly explained. Unless the application for recusal is made against the chairperson of the Commission to which application shall be decided by the Executive Yuan, the Commission shall inform the party in writing to make addendums or supplements within a time limit if the application does not conform to the requirements as specified above.

6. In any of circumstances as specified in Article 32 of the Administrative Procedure Act, or the circumstance of conflicts of interest as stipulated in Paragraph 2, Point 3 hereof has occurred, the personnel fails to recuse himself/herself notwithstanding the fact that he/she is obligated to recuse himself/herself, the Commission shall order the personnel to recuse himself/herself ex officio.
7. In addition to the circumstances set forth in Paragraph 1 of Article 33 of the Administrative Procedure Act, or Paragraph 2, Point 3 hereof, the personnel may recuse himself/herself upon the provisions of reasons for recusing and the facts been explained if he/she believes that he/she is incapable of performing his/her duty fairly and objectively, or any other circumstance that is sufficient to cause any of the parties in the administrative procedure think the Commission's decision untrustworthy or that may cause a dispute.
8. The personnel whose recusal has been applied for shall not participate in the investigation and deliberation procedures of the case in question, and the case shall be performed by his/her proxy, before the Commission makes a decision to either approve or reject the application; provided, however, that a necessary action shall be taken in urgency situation.
9. The personnel who becomes aware of the need to recuse under either Point 4 or Point 7 hereof shall submit his/her written notification for approval and inform the Civil Service Ethics Office [before commencing work on the case in question]. If the personnel is unable to submit voluntary recusal notification in

advance due to an incident, he/she can report to the chairperson of the Commission, the chairman of the meeting for the case in question, or the office supervisor and seek for recusal approval. Upon approval, the recused personnel shall also inform the Civil Service Ethics Office.

The matters specified in Point 5 and Point 6 hereof shall be handled by the Civil Service Ethics Office. The Civil Service Ethics Office shall give the personnel the opportunity to express his/her on the matter for recusal. The office in charged with the case in question or the Department of the Legal Affairs shall assist with the provision of evidences or the expression of opinions when necessary.

With regard to the matters as stated in the preceding paragraph, the Civil Service Ethics Office shall submit its findings and suggestions, upon consolidating the statements and opinions made by the parties and the personnel involved, to the chief secretary, the commissioner in charge of the case in question, the vice-chairperson, and the chairperson for review. However, when the personnel involved refers to the commissioner, the matter shall submit to the Commissioners' Meeting for decision.

10. The Commission shall make a decision within 20 days and notify the parties in writing regarding the recusal application matter as made by the parties in accordance with Point 5.

If the decision referred to in the preceding paragraph is to overrule the recusal application, the following wording shall be included in the decision: "In the case of dissatisfaction to the decision of the Commission to overrule the application, the matter shall be brought to the Executive Yuan for review within five days upon receipt of the decision."

The period specified in the first paragraph shall commence on the date of application made by the parties. However, if the parties fail to make a statement with a thorough explanation as required by Paragraph 2, Point 5 hereof, it shall commence on the date of addendums and supplements provided by the parties.

11. Upon the approval for the personnel's voluntary recusal or application for recusal by the parties, the recused personnel shall hand over the relevant documents and materials involving a matter from which he/she is recused to other personnel who will assume responsibility and authority for the matter.
12. When the subject matter for recusal is being discussed and the decision is being concluded, the personnel involved shall not participate in the discussion of the recusal.