Conflict Of Interest Policy: Everything You Need Know

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The area of *conflict of interest* has long been the source of much debate both amongst board members and in the wider public domain. In the country context conflicts often arise publicly in areas such as the awarding of tenders and the granting of jobs to relatives. However, directors are often at risk because they are unaware of the conflict or potential conflict. The existence of a c*onflict of interest* in public service is as old as public administration. Whereas in many societies in the past it had been assumed that elected or non-elected public officials would take advantage of public office to promote their interests in modern societies they should be expected to act exclusively in the interests of the state. The democratization of society means public officials are now expected to "discharge their duties in the public interest and with fairness and impartiality" (Seger, 2008).

The same is being advocated for in the business world through effective corporate governance measures. Best practices call for separation of personal and organizational interests and where they collide it is the organizational interests that should be given preference.

What is a *Conflict of Interest?*

Conflicts are defined in many ways; however, the basic elements of any of these definitions is the tension between multiple competing interests, be these personal or financial. This often manifests in the entanglement of the private and professional interests of an individual. These conflicts may be actual or perceived.

A *conflict of interest* occurs when an individual's interests – family, friendships, financial, or social factors – could compromise his or her judgment, decisions, or actions in the workplace (Integrity Star, 2016). Government agencies take conflicts of interest so seriously that they are regulated. Industry organizations, corporations, and universities follow that lead by including conflicts of interest in their policies, regulations, and standards of operating procedures.

Conflicts of interest are a clash that most often occurs between requirements and interests. Various types of conflicts of interest can occur because of the nature of relationships versus rules of organizations or state laws (Lankester, 2007). People can easily become biased (have an unfair preference) because of small things like friendship, food, or flattery, or they may be influenced to decide because of the potential to gain power, prestige, or money. *Conflicts* can occur when an individual makes or influences a decision and does so for some personal gain that may be unfair, unethical, or even illegal (Lankester, 2007). The important part is what one does in each of those situations. Do they allow their family, friendship, financial, or inside knowledge to affect their actions? If they do, they could be violating state statute and organizational policy.

A *conflict of interest* occurs when an entity or individual becomes unreliable because of a clash between personal (or self-serving) interests and professional duties or responsibilities (Segal, 2020). Such a conflict occurs when a company or person has a vested interest—such as money, status, knowledge, relationships, or reputation—which puts into question whether their actions, judgment, and/or decision-making can be unbiased (Segal, 2020). When such a situation arises, the party is usually asked to remove themselves, and it is often legally required of them (Segal, 2020).

Key takeaways

- A *conflict of interest* occurs when a person's or entity's vested interests raise a question of whether their actions, judgment, and/or decision-making can be unbiased.
- In business, a *conflict of interest* arises when a person chooses personal gain over duties to their employer, or to an organization in which they are a stakeholder, or exploits their position for personal gain in some way.
- *Conflicts of interest* often have legal ramifications.

Understanding *Conflict of Interest* (Business Context)

Conflict of interest is a common issue in the workplace. Most of us have heard someone say, "It's who you know, not what you know" (Integrity Star, 2016). One might have heard co-workers complain that a manager's relative always gets the biggest raise or the best assignment. We might have seen colleagues accept gifts from potential vendors. Maybe a co-worker leaves work 20 minutes early every day so she can get to her second job (Integrity Star, 2016).

A *conflict of interest* in business normally refers to a situation in which an individual's personal interest's conflict with the professional interests owed to their employer or the company in which they are invested (Segal, 2020). A *conflict of interest* arises when a person chooses

personal gain over the duties to an organization in which they are a stakeholder or exploits their position for personal gain in some way.

All corporate board members have fiduciary duties and a duty of loyalty to the corporations they oversee. If one of the directors chooses to take action that benefits them at the detriment of the firm, they are harming the company with a *conflict of interest* (Segal, 2020).

The existence of a conflict is, however, not necessarily an indication that impropriety has occurred. The management of the conflict is a crucial step in dealing with these issues and is the responsibility of the individual director. As King III (2009) states, the onus is on individual directors to assess whether he or she is free from apparent or actual conflicts. Whilst the Act does address a limited range of conflicts, directors should bear in mind that those conflicts not covered by the Act may be covered by the common law of the country for example common law in Zimbabwe.

Examples of common conflicts include:

- The CEO acting as a member of the remuneration, audit, or nomination committees, rather than attending by invitation to discuss matters other than his or her remuneration.

- A staff member or director accepting frequent or lavish entertainment or gifts from a supplier or contractor who has business dealings with the company.
- The director of a company proposing the appointment of a company that he or a close family member has a beneficial interest in.
- The director of a company whose family member is proposed for a position within the company or who is present when any aspect of that family member’s remuneration is discussed.
- Directors who are appointed by major shareholders or others who expect them to act on their behalf, and not necessarily in the best interest of the company on whose board they serve, (see also the ‘Representative Director’ position paper in this regard)

CONFLICT OF INTEREST POLICY

What is the purpose of *a conflict of interest policy*?

The purpose of the *conflict of interest policy* is to protect the FIRST's (Organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. The purpose of this Policy is to ensure that all potential conflicts of interest within an organization are identified and addressed in an appropriate and timely manner.

Definitions of terms within a conflict of interest policy

1. Interested Person

Any director, officer, or member of a committee with board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
- A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.
  Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2 (King III 2009), a person who has a financial interest may have a conflict of interest only if the Board decides that a conflict of interest exists.

PROCEDURES (example)

1. Duty to Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be allowed to disclose all material facts to the directors or members of committees with governing board delegated powers considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the board meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

1. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
2. The Chair of the board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
3. After exercising due diligence, the board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
4. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in FIRST's best interest, for its benefit, and whether it is fair and reasonable, then make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

1. If the board has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and allow the member to explain the alleged failure to disclose.
2. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the board determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Disclosure Regarding *Conflicts of Interest*

Persons are supposed to state that they have received a copy of the Conflict of Interest Policy. They are also supposed to state that they have read and understood the policy and agree to comply with it. On the given form, they are supposed to disclose other positions and responsibilities that may cause conflicting interests to arise. They are also expected to state that they will recuse themselves from deliberations and voting on transactions or arrangements that give rise to a conflict of interest.

What is key when dealing with *a conflict of interest?*

Transparency (being completely open and frank) becomes important when dealing with both actual and potentially perceived conflicts of interest. Perception happens when an individual observes something (behavior or activity) and comes to a conclusion. Perceiving a conflict of interest does not make it a conflict of interest. The true test of verifying whether a matter is just a potentially perceived conflict of interest, or actual conflict of interest, is disclosure (Segal, 2020).

When it comes to conflicts of interest, appearance is as important as reality. This is why disclosing conflicts of interest is important (Segal, 2020). Disclosure is typically a more formal and documented process that most organizations have adopted in policy to address conflicts of interest. The disclosure process is intended to help the workforce be transparent and accountable for (explain or justify) their actions and decisions. Disclosure of a potential conflict of interest does not make it an actual conflict but may help eliminate the perception. On the other hand, disclosure of an actual conflict of interest does not remove the conflict but helps get it in the open to be properly addressed. It's important to disclose both potentially perceived and actual conflicts of interest to allow others to evaluate the matter and make the decision, rather than keep it to oneself and then create an ethical or legal situation (Segal, 2020). The individual cannot determine as to whether it is a conflict or not because he or she does not have an independent or objective point of view.

Conclusion

"When in doubt, ask" is an old saying that makes a great deal of sense when working through conflicts of interest. There is no harm in asking, but there could be a great deal of harm to an individual, the organization, or both, by not asking. It is always best to be transparent and accountable to ensure we eliminate either the perceived or actual *conflict of interest*.

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