

AccountAble™

Conflict of Interest

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In the movie 'Aakhri Rasta'¹ Amitabh Bachchan plays a double role: he is the father and he is also the son. The father comes out of jail after 20 years and is all set to take revenge on a few people, including a minister.



In the meanwhile, the son has grown up to be a police officer. He is responsible for security of the Minister. He then comes to know that the criminal hunting the Minister is his own father!

He is now torn between his sworn duty and love for his father. With some help from the storywriter, he is able to balance the two and comes out with a clean conscience.

Similar conflicts of interest exist in our day to day work. Fortunately, for most of us, they do not require Amitabh's daring stunts.

What is conflict of Interest

A conflict of interest occurs when you are torn between two loyalties. It is a peculiar situation to be in. A very honest person will

wonder whether he /she helped one party at the expense of the other. He / she will also worry whether others will think bad things about him / her. On the other hand, a dishonest person is more fortunate – he / she doesn't ever have to worry about conflict of interest!

Many professions have well-defined policies to handle this. For example, an auditor can not take up an audit where he or she owes more than Rs.1,000 to the client. Similarly, a judge can not give judgement in a case where one of her relatives is involved.

No similar procedures exist in the NGO sector. NGOs are today assuming an increasingly important role in the society. This will eventually bring media attention to how they work themselves. Conflict of interest is an area where much can be done.

Examples

Conflict of interest can occur at any level and at any time. Some examples from the NGO sector will help us understand this better:

At Board Level

- ☞ The NGO purchases a piece of land from a trustee or his / her relative.
- ☞ The NGO appoints the Chief Functionary's spouse as a consultant.

At Operating Level

- ☞ Taxis are regularly hired from a firm owned by the Administrator's brother-in-law.

¹ Hindi phrase, meaning 'The Last Option'

- ☞ Agency's Program staff accepts consulting assignment from one of the grantee NGOs.

interested in the transaction may influence the decision-making or monitoring.

In Grant making

- ☞ The Program Officer makes a grant to an NGO just before end of his / her tenure and then joins the NGO as director.
- ☞ Grants are made to NGOs where the Agency's Director or staff or their relatives hold positions².

Implications

Conflict of interest is not bad in itself. In today's society when people have multiple responsibilities, this is natural. Things like networking and working together on issues also increase chances of a person occupying two positions.

However, if conflict of interest is not handled properly, it can lead to loss of money, image or reputation. In some cases, it may also result in civil or criminal proceedings.

Managing Conflict of Interest

In the normal course of work, all decisions are properly scrutinised. Also most such decisions help the organisation move forward at an optimum cost. Later, the implementation of the decision is also monitored quite carefully.

However, this process may be short-circuited in some situations. This is more likely when a conflict of interest exists. The person who is

Some Real Life Cases

A trustee of Kermit Fischer Foundation, USA received irregular salary amounts ranging from Rs.8,000 to Rs. 3,20,000. The Foundation purchased a truck for his exclusive use. It made investments with his brother. The amounts paid were not reported to Income Tax. A court ruled that these transactions were irregular. The foundation's tax exemption was withdrawn. Both the foundation and the trustee had to pay extra tax.

In 1998, Adelphi University, New York recovered Rs.17.6 crores. from 18 ex-trustees and college ex-president, Dr. Diamondopoulos. These funds were allegedly used to support a lavish life-style for Dr. Diamondopoulos. This included a swank apartment in Manhattan (owned and maintained by the University), unjustified increases in remuneration, and reimbursement of travel and entertainment expenses without review. Also there were related party transactions of some trustees with an insurance brokerage firm and an advertising agency. The 18 trustees were charged with neglect of duty.

It is not necessary that this will always happen. Also in some cases, the interested person might help in getting a better deal or service.

Even so, having a proper conflict of interest policy will help manage the problem. This policy could be built around the following two principles:

1. Disclosure of Interest

In the Corporate world, all directors have to give a list annually. This list includes names of all their relatives and concerns in which they or their relatives are interested.

In the NGO world, this can be extended a little. All persons in key positions could disclose their interest in other organisations / concerns. In some cases, their close relatives may be running an organisation. The name of such organisation should also be included.



The concept of key positions covers all people who are involved in the decision-making and monitoring process. Examples include trustees, directors, managers, senior executives etc.

2. Role in decision-making and monitoring

Once the disclosure of interest is on record, we can take the next step. This is to make

² This problem does not arise if the position is held 'ex-officio'.

sure that the interested person does not go through the Amitabh syndrome! How to do this?

Normally, such persons should not involve themselves in the particular decision. They should also avoid getting involved in the subsequent monitoring process. Obviously, they would also avoid informal lobbying for or against the decision.

Mark R. Simmons³ offers a five-point solution to managing conflict of interest:

1. Establish a clear tone at the top that conflicts of interest should be avoided, if possible
2. Identify those areas of work which have high risk for conflict of interest
3. Establish an organisation-wide policy (see below) on how conflicts of interest should be identified and handled
4. Educate directors, officers and employees on the subject
5. Perform periodic reviews to evaluate effectiveness of established policies

Registers and Records

No such discussion can be complete without a register popping up on the scene. Here we need at least two:

1. **Disclosure Register:** Contains listing of relatives, concerns etc. for each key person. Each key person's listing is started on a new page and is dated.
2. **Transaction Register:** Contains listing of all transactions valued⁴ at (say) Rs.20,000 or more. It also shows which key person was interested.

Additional information on these transactions can be kept in the Minutes' Book. Another useful place is the approval letter. The letter can summarise the conflict of interest and summarise how it was tackled.

³ Internal Auditor at Rensselaer Polytechnic Institute. e-mail: mrsaciace@aol.com

⁴ Cumulative value for each key person in a year

Designing a Conflict of Interest Policy

How to design a suitable policy for yourself. Firstly, we should recognise that conflict of interest can not be eliminated. It can only be discouraged or managed. Herrington J. Bryce⁵ offers an interesting structure in five parts: commitment, prohibition, money-value, transparency, and corrective action.

Bryce's suggestions are made in the US context where Boards are relatively strong. Further, NGOs' work is regulated more effectively than in India. Therefore, some of this may not be directly applicable to the Indian situation.

1. Commitment to duties:

- ☞ The duty of undivided loyalty to the NGO / Agency
- ☞ The duty of care
- ☞ Prohibition against self-dealing
- ☞ Need for accountability and stewardship

2. Prohibitions:

- ☞ The NGO / Agency will not loan money or property to a board member.
- ☞ The NGO / Agency will not sell or buy or lease land or buildings from a board member without court approval.
- ☞ The NGO / Agency will not do business with a board member in a way that is unfair to itself.

3. Transparency:

- ☞ Each trustee must disclose possible points of conflict.
- ☞ Such trustees should not be present when the matter is discussed

4. Money Value:

Also consider the amount involved. For example, if the total value of all such transactions with a board member in a year exceeds Rs.20,000, then:

⁵ Financial & Strategic Management for Nonprofit Organizations, 3rd edition. Jossey-Bass Publishers, San Francisco, USA

- ☞ The goods or services must be provided to the NGO at actual, reasonable or discounted value.
- ☞ Details of the transaction must be disclosed to the Board. The concerned member can not participate in discussion or voting.
- ☞ Detailed minutes of the transaction must be kept.
- ☞ The transaction must be authorised by $\frac{2}{3}$ of the voting board. Persons who have themselves sold services or goods to the NGO in last one year, can not vote on this transaction.
- ☞ The attorney general (similar to Charities Commissioner in Mumbai) must be notified in advance.
- ☞ If the transaction exceeds Rs.2 lacs, then it must be published in a local newspaper.

5. Corrective Action:

The policy should also provide for corrective action, when unfair transactions are discovered later:

- ☞ A transaction showing conflict of interest can be voided later if it is seen to be in bad faith.

As discussed earlier, this coverage can be extended to other key persons.

In practise, many key persons have found this sort of policy useful in another way. It offers them a ready-made excuse to say 'no' to their friends, relatives and associates!

Moonlighting

Moonlighting is an American term. It may sound very romantic but it simply means holding two jobs. One job is done during the day and the second is done in the night.

Moonlighting is not very common in a job-market like India. How-



ever, things are changing, especially in the metros. There are people who take up a part-time job or do some extra consultancy assignments. How to deal with these?

As always, there are at least two ways. One is to simply prohibit all employees from having other jobs. If you can do this, there is no need to read further.

In principle, a second job should be discouraged for full-time employees. Sometimes, however, there may be a situation where you can not meet the employee's financial or intellectual needs. In such cases, you may want to allow people to take up other jobs. For this you will need a 'moonlighting policy'. This should address four basic issues:

1. **Disclosure:** All employees must be willing to disclose necessary details of the secondary assignment / job.
2. **Approval:** The employee should discuss the second job with his / her supervisor before accepting it. Secondly, written permission must be taken for all such jobs / assignments.
3. **Interference:** The second job / assignment should not mean that you have to change work-hours for the person. Also you should not have to change work schedules to accommodate the second job.
4. **Conflict of interest:** The employee should be able to maintain confidentiality at both places. Further, the employee should not promote the work of second employer / client at your cost.

Additionally, the employee must agree to always disclose any 'moonlighting' that they do.

AccountAid India also offers 'QuestionAble' (a complimentary service for NGOs) – answers to practical questions on this and related topics.

Your questions, comments and suggestions can be sent to AccountAid India, 55-B, Pocket C, Siddharth Extension, New Delhi-110 014; Phone: 011-2634 3128; Ph./Fax: 011-2634 6041, e-mail: accountaid@vsnl.com; accountaid@gmail.com Web-site:www.accountaid.net © AccountAid® India 2000