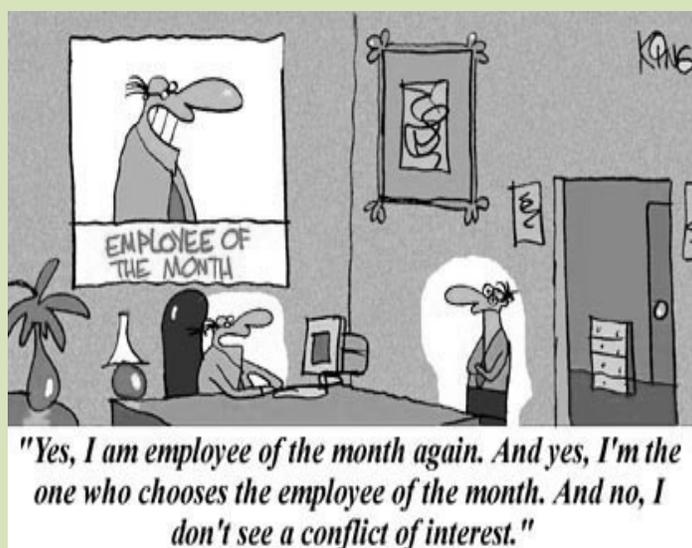


NPO GOVERNANCE TOOL BOX SERIES

Vol. 5, Issue 2

For private circulation only

POLICIES – CONFLICT OF INTEREST POLICY



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CONFLICT OF INTEREST POLICY

Vol. 5, Issue 2

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CONFLICT OF INTEREST POLICY

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1. INTRODUCTION

A Policy is a set of coherent decisions with a common long-term purpose. Policies normally have two essential elements – policy objectives, the ends and policy instruments, the means. In an organization, policies act as the standard operating protocol adopted for effective implementation of plans, project and programmes. Conflict of Interest Policy is one such organizational policy.

2. WHAT IS CONFLICT OF INTEREST?

Conflict of interest is a situation where a person has interest in different capacities. Interest in different capacities may be understood as a situation wherein a person has a fiduciary responsibility of promoting an interest, but has another competing interest at the same time. When the competing interest is exercised over the fiduciary interest, this situation is termed as Conflict of Interest. In simple terms, when an interested person is also involved in the decision making, it is termed as conflict of interest.

2.1. Illustrations for conflict of interest in an organization

When the decision making person of an organization is involved in the following transactions, conflict of interest situation can arise:

- Appointing relatives in board or senior management;
- Selecting a vendor who is a relative;
- Deciding and Paying of fees/remuneration to self or relatives;
- Purchasing/Leasing a property for organization from a relative or self;
- Selling/taking on lease a property for organization from a relative or self;
- Having Directorship or Managerial position in other competing organization(s);
- Providing consultancies in personal capacities;
- Having personal interest in any decision or resolution;
- Having relations/ownership or substantial interest in an organization giving or receiving donations.

2.2. Who is an Interested Person?

Whenever a person involved in decision making has another competing interest as illustrated in section 2.1, she/he should be considered as an interested person. Generally, the following persons are involved in the decision making process and may face a conflict of interest while making decisions:

- Founder(s)
- Board Members/Trustees
- Senior Management: Executive Director, Chief Executive Officer, Chief Finance Officer, other Head of Departments etc.

3. WHAT IS CONFLICT OF INTEREST POLICY?

Conflict of Interest Policy is a guiding document which sets the standard operating protocol of an organization to be adopted wherever the organization or an individual in the organization has a Conflict of Interest.

3.1. Objectives of Conflict of Interest policy - ‘The Ends’

Conflict of Interest policy helps the organization to establish robust structures and procedures to be adopted in case a conflict of interest is identified. Following are the key objectives of a Conflict of Interest policy-

- To provide guidelines for identification of the conflict of interest
- To provide formal procedures to be adopted in case of a conflict of interest
- To provide clear reporting structures that spell out the nature and persons having a conflict of interest
- To provide guidelines to the individual/organization for avoiding/managing issues of conflict of interest

3.2. Procedure to handle Conflict of Interest – ‘The Means’

The conflict of interest within the organization should be handled with due transparency and the decision should be made in the interest of the organization instead of the interest of an individual involved in decision-making. For example, in case of selection of an employee in an organization, the proper handling of conflict of interest ensures that all applicants get a fair chance of selection irrespective of his/her relationship with the employer.

Irrelevant of the size, nature or area of operation of an organization, there are three steps to handling Conflict of Interest issues. The procedure starts with Identification, followed by Disclosure and Decision-making.

i. Identification

All Conflict of Interests should be duly identified by the persons holding an office, Board Members, and Senior Management team of the organization.

The “Related Party Questionnaire” is a relevant tool for identification of Conflict of Interests. The format of the Related Party Questionnaire may be referred from Annexure 1.

ii. Disclosure

Once the Conflict of Interest has been identified, the disclosure shall be made by all the interested parties. As a good practice the disclosure shall be submitted as per the following:

Person with Conflict of Interest	→	Disclosure to be submitted to
Employees	→	Senior Management
Senior Management	→	Board
Board Members	→	Chairman
Chairman	→	Board Members

An organization may however adopt a different system for submission of disclosure. Such disclosures may be submitted either annually or upon occurrence of a conflict of interest.

iii. Decision Making

Once the disclosure is made by all individuals, the decision regarding such transactions/events may be made by the Board or the concerned Department/Committee. Person(s) having a conflict of interest should refrain from being part of such processes. This would ensure transparency and fair decision making in the process. It should be ensured that all such processes of decision making are duly documented, i.e. the minutes of the proceedings should be duly recorded for future reference.

3.3. How to Develop a Conflict of Interest policy?

A conflict of interest policy can be developed within an organization by following the below suggested process:

Step 1: Need Establishment

The organization should have an internal discussion on the need to have a Conflict of Interest policy. This discussion should be led by the Board.

Step 2: Formation of Drafting Committee

The Board should form a Committee to prepare a draft of the policy. The key issues and requirements should be discussed within the team for a better understanding of the members. As a good practice the Drafting Committee should comprise of the following members:

- At least one Board member
- Executive head/ Chief Functionary
- Representative from Finance team
- Representative from HR/Administration team
- Representative from Programme Team

Step 3: Preparation of Draft

The Drafting Committee should prepare the draft of the policy after discussions. While preparing the draft, the Committee should define the scope and purpose along with the procedures to be adopted. This will help the stakeholders to acquire a better understanding of the applicability and purpose of the policy. The Committee may also seek advice from external experts. However, suggestions from experts should be included only after obtaining a unanimous consent of the Committee members.

Step 4: Review of the Draft

The draft should then be reviewed individually by each Drafting Committee member. The suggestions should be placed before the Committee which should be incorporated with majority acceptance.

Step 5: Approval

Once the Drafting Committee is satisfied with the draft, it is shared with the Board for their approval.

After receiving the draft, the Board may make the desired changes in the draft or direct the drafting committee to make certain changes and thereafter approve the policy after unanimous consent within the Board members.

3.4. What should be the content of the Conflict of Interest policy?

Broadly, an ideal Conflict of Interest Policy should contain the following contents:

- a) Preamble/Introduction to the policy
- b) Aim of the policy
- c) Scope or the coverage of the policy
- d) Objectives of the policy
- e) Definitions of the technical words in the policy
- f) Procedures for handling the conflict of interest
- g) Addressing the violations of policy
- h) Procedure for the reviews and amendment to update the policy
- i) Declaration for the acceptance and date of adoption of the policy with signatures of the board members

Please refer *Annexure 2* for the template of Conflict of Interest Policy.

4. CONCLUSION

It should be understood that the policy on Conflict of Interest is merely a tool for handling the cases of identified conflict of interests. The policy does not ensure addressing all the potential cases until and unless the cases are identified. Further, the identification of the cases is subjective to the integrity and conscience of the persons concerned. The organization should ensure to cultivate a sense of integrity and accountability within all its stakeholders for a better management of Conflict of Interest.

RELATED PARTY QUESTIONNAIRE

S No.	Question	Response
1	Do you or any related party of yours have any material interest, direct or indirect, in any completed or pending transaction?	
2	Have you or any related party of yours been indebted to the organization at any time during your tenure with the organization? Please exclude amounts due for purchases on usual trade terms and for ordinary travel and expense advances.	
3	If you have management control of another entity which could significantly affect the operating results or financial position of organization, please indicate the nature of the relationship.	
4	Please list all organizations of which either you or a related person is/are Director, Trustee, Service Provider or Member.	
5	Please list all organizations of which either you or a related person is an officer or employee.	

I hereby declare that the answers to the foregoing questions are correctly stated to the best of my knowledge and belief.

Signature:

Date:

Name:

Designation:

I. Definitions for Purposes of This Questionnaire

- a) **Related Person:** A related person means the same as defined in Income Tax Act 1961 and Companies Act 2013.

Definition of Relative is given under Sec 2(77) of the Companies Act, 2013. As per the Ministry of Corporate Affairs Notification issued on the 31st March, 2014, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

(1) Father:

Provided that the term “Father” includes step-father.

(2) Mother:

Provided that the term “Mother” includes the step-mother.

(3) Son:

Provided that the term “Son” includes the step-son.

(4) Son’s wife.

(5) Daughter.

(6) Daughter’s husband.

(7) Brother:

Provided that the term “Brother” includes the step-brother;

(8) Sister:

Provided that the term “Sister” includes the step-sister.

The Income Tax Act 1961 defines a ‘person’ as:

An individual,

A Hindu undivided family,

A Company,

A firm,

An association of persons or a body of individuals, whether incorporated or not,

A local authority, and

Every artificial juridical person, not falling within any of the preceding

- b) Control:** Means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a specified party whether through ownership, by contract, or otherwise.
- c) Management:** Means any person(s) having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and make the decisions by which such objectives are to be pursued. It would normally include members of the Board of Directors, the President, Secretary, Treasurer and Vice-President in charge of an organization and other individual persons who perform similar policy-making functions.
- d) Disclosure:** Means disclosure by the Director who has conflict interest of:
- The existence and nature of the Director's conflicting interest, and
 - All facts known to the Director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment as to whether or not to proceed with the transaction.

TEMPLATE OF A CONFLICT OF INTEREST POLICY

1. Preamble/Introduction

This section shall deal with the introduction of the policy. It shall mention the situations leading to conflict of interest and the need for the policy on conflict of interest.

2. Aim

This section shall mention the aim of the policy for better understanding of the policy to the reader.

3. Scope

This section shall define the overall applicability of the policy. It shall mention all the individuals and the office bearers who are covered under the policy.

4. Objectives

The objectives of the policy as per the organizational context shall be mentioned in the policy.

5. Definitions

The policy shall also incorporate the definitions of the technical words in the policy for better understanding of the policy to ensure that the reader infers the same meaning to a statement with which it was incorporated in the policy.

6. Procedures

The procedure for the management of conflict of interest shall be duly mentioned in detail. It shall describe the process for identification of the conflict of interests and the disclosure procedure. It shall deal with all the required actions to be performed, or not to be performed by an individual in case of conflict of interest.

7. Violations of Policy

The policy shall also describe the procedure to be adopted in case a violation to the policy is identified.

8. Reviews and amendment

The document shall also describe the procedure for review and amendments of this policy.

9. Declaration

The last page of the policy document shall contain a declaration stating the date of the adoption of the policy in the organization which shall be duly signed by the Board members which represent the acceptance of the policy by the members.

Watch out for the next issue on “Policies – Finance Policy”

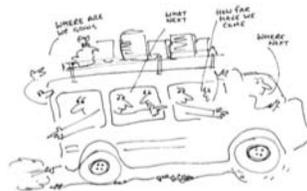


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