Managing Conflict of Interest to Mitigate Corruption Risks

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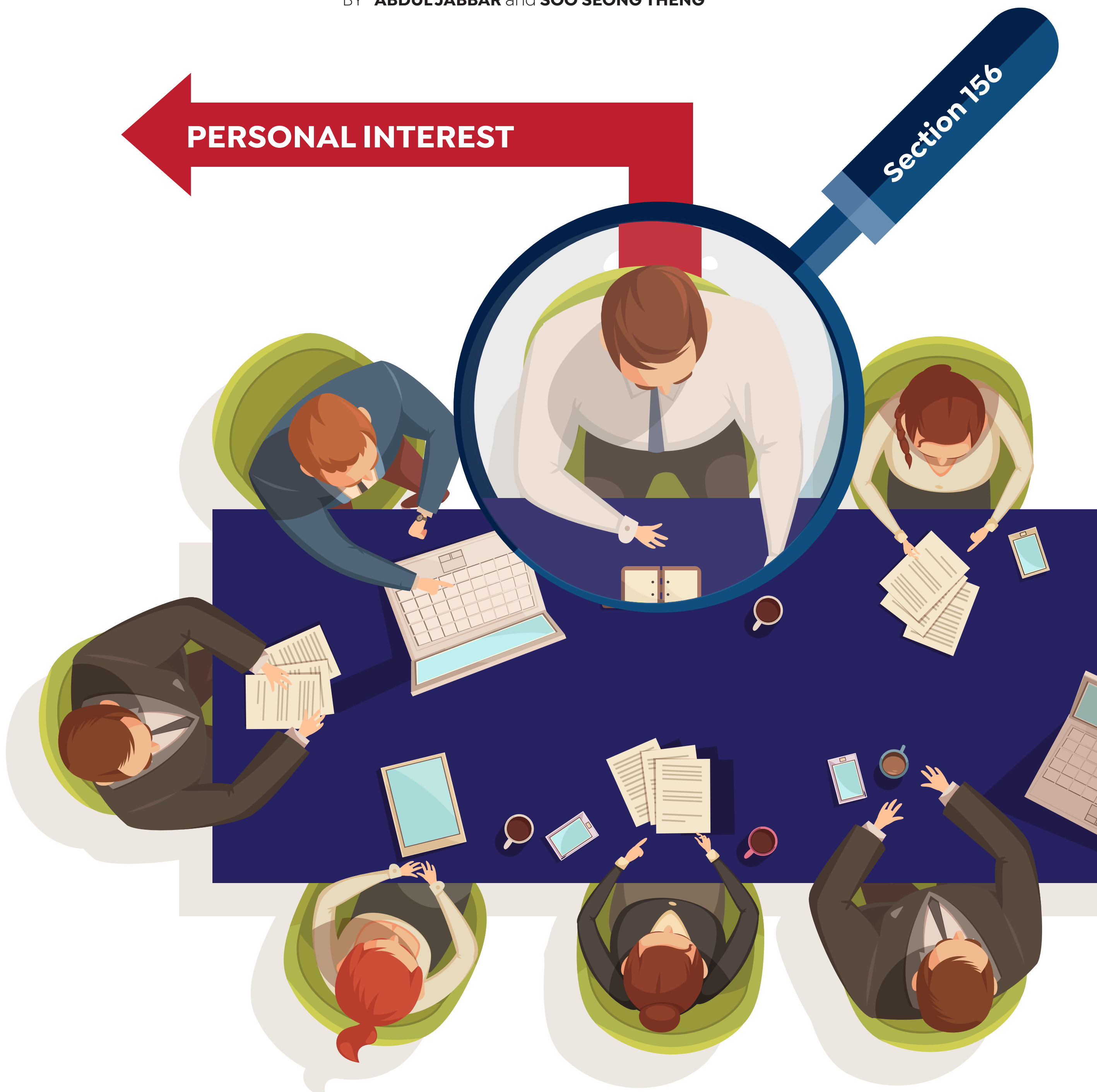


In law, directors are not allowed to place themselves in a situation where their personal interests conflict, or may conflict, with the interests of the company. The test in determining whether a situation amounts to a potential conflict between a director's interests and the company's interests is whether a reasonable person looking at the relevant facts and circumstances of the situation would think that there was a real sensible possibility of conflict.

Conflicts of interest can be dicey and precarious for directors, even leading to conviction for corruption.

Conflict of interest does not always result in corruption, but corruption always involves conflict of interest. Let us consider the situation in the box, "Case Study: Alternative Supplier".

As illustrated in the Case Study, when in doubt, a director should always disclose any potential conflict of interests and avoid taking part in any discussions or deliberations where they are conflicted, even if the constitution of the company permits them to do so. Disclosure is the first step to managing and resolving conflicts of interests in a transparent and accountable manner.

Disclose and manage conflict of interest

For this reason, Section 156 of the CA imposes a statutory obligation on a director or chief executive officer (CEO) of a company to declare the following interests to the board of directors of the company:

- Interests in a transaction or a proposed transaction with the company.

Case Study: Alternative Supplier

Dan is a director of Company A, which needs a key raw material that is mainly supplied by Original Supplier. Dan was dissatisfied with Original Supplier monopolising the market for the key raw material and had decided to help some unhappy ex-employees of Original Supplier to set up Alternative Supplier to compete with it. Dan was offered shares in Alternative Supplier. He accepted and arranged for the shares to be held by a nominee.

Company A held a tender for the supply of the key raw material, where Alternative Supplier, Original Supplier and other companies bid for the contract. Alternative Supplier won the contract because of the low prices quoted and its team's familiarity with Company A's needs. Dan was involved in the selection process for the winners of the tenders, but did not reveal his beneficial ownership in Alternative Supplier. Dan received dividends from Alternative Supplier as a result of the profits made by the company.

Is Dan involved in any corrupt activity and has he breached any laws? What could Dan have done to avoid getting into trouble with the law? To answer these questions, let us look at the law governing corruption and conflict of interest in Singapore.

Conflict of interest or corruption?

Dan is guilty of corruption under the Prevention of Corruption Act 1960 (PCA), Section 5, if the gratification or reward that he received, namely the shares in Alternative Supplier and the dividends received on those shares, was as a reward or as an inducement for influencing Company A's decision in awarding the tenders to Alternative Supplier. The question is whether Alternative Supplier gave, and Dan received, the shares as a favour for conferring a dishonest gain or advantaging Alternative Supplier in the tenders.

The surrounding circumstances of the transactions, such as surreptitiousness of Dan's beneficial ownership in the Alternative Supplier's shares and his continued involvement in the tender selection process, would be factors considered by the court in determining the intentions of Dan and Alternative Supplier.

As a director of Company A, Dan has breached the Companies Act 1967 (CA), Section 156, for failing to disclose his personal interests in Alternative Supplier, one of the companies involved in the tender for Company A's key raw material supply contract. While the court would take this into account in deciding whether the transactions

- Holding of any office or possession of any property that may create any duty or interest that may be in conflict with their duties or interests as a director or CEO.

The objective of Section 156 of the CA is to ensure that the board of directors addresses its mind to the following matters when a director or CEO declares a conflict of interest:
- All the directors should know or be reminded of the interest.
- The declaration should make them stop and think about the conflict of interest and their obligation to put the company's interests before their own.
- The minutes of the meeting must document the disclosure or reminder as a distinct item.

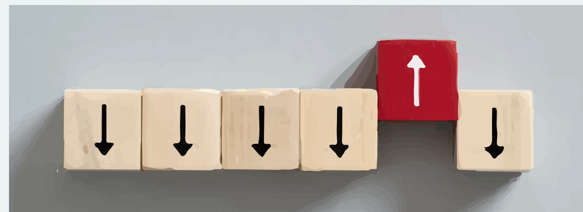
The directors must make a full and frank declaration under Section 156 of the CA. They must reveal the exact type of interest they have, and, if their claim to the validity of a contract or arrangement depends upon it, they must show that they have in letter and spirit complied with Section 156 of the CA. The mere disclosure under Section 156 of the CA without

were corrupt, a corrupt element would not be constituted merely because there had been a breach of the CA.

Mitigating the risk of corruption

As a fiduciary, a director owes a duty to the company to act in the best interest of the company. So, directors are not allowed under the CA to place themselves in a situation where their personal interests conflict, or may conflict, with the interests of the company. The test in determining whether a situation amounts to a potential conflict between a director's interests and the company's interests is whether a reasonable person looking at the relevant facts and circumstances of the situation would think that there was a real sensible possibility of conflict.

To apply this test to Dan's situation, a reasonable person would ask if Dan could be impartial when evaluating the tenders for the raw materials supply contracts, since he has a beneficial interest in Alternative Supplier, one of the tenderers. The answer to this question is probably no. In this circumstance, the right thing for Dan to do is to disclose his personal interests in the transaction to Company A as soon as practicable and recuse himself from evaluating the tenders.



The law governing a director's conflict of interest is very strict. A director cannot claim that their action was in good faith or for the benefit of the company if they act for their own advantage. In Dan's case, even if his intention of supporting the setting up of Alternative Supplier was in the best interests of Company A, as this would create competition in the key raw material market, he would be in breach of his fiduciary duties if he had put himself in a position of conflict, and he did not disclose it to Company A.

However, Dan's argument that his intention of supporting the setting up of Alternative Supplier was in the best interests of Company A may be considered by the court as a factor that negates his corrupt intent in the transactions. Having said that, the CA and good corporate governance would dictate that directors be upfront and transparent about any potential transactions which may put them in a position where their personal interests may conflict with the company's interest.

further actions taken by a director and/or the board of directors to manage the conflict of interest would not absolve the director from liabilities for breach of his/her fiduciary duties or corruption.

When a director has a conflict of interest in a deal or a potential deal, the board of directors can ask the director to withdraw from the discussions and voting on the deal, and restrict their access to any confidential information about the deal. If needed, the company should seek the shareholders' approval for the deal or seek advice from independent experts and professionals on how the conflict of interest may be addressed.

In addition to the broad principles set out in the CA and common law for disclosures of a director's conflict of interest and prompt actions in managing them, companies in Singapore should take note of other corporate governance best practices that focus on guarding against the risks of interested persons or related persons inducing a company or its group companies to enter into transactions that may not be in the best interests of a company and its shareholders.

Notably, companies which are listed on the Singapore Exchange (SGX) are subject to the requirements set out in Chapter 9 of the SGX Mainboard and Catalist Listing Rules on interested person transactions (IPT). An IPT is a transaction between an interested person and an entity at risk, namely, the SGX-listed company, its unlisted subsidiaries or unlisted associated companies which are controlled by the listed group, or the listed group and its interested persons. An interested person refers to a director, CEO or controlling shareholder of the SGX-listed company and their associates.

When an SGX-listed company has an IPT, it must immediately announce the information prescribed in the Listing Rules. Depending on how significant the transaction is for the listed company (calculated based on the materiality thresholds prescribed in the Listing Rules), the SGX-listed company may also need to seek the approval of independent shareholders at a general meeting before the transaction is entered into.

Companies (whether listed or unlisted) which are reporting their financial performance through the Singapore Financial Reporting Standard (SFRS) are required to disclose related party transactions in their periodic financial statements. The scope of the related party transaction disclosure under the SFRS is broader than the IPT transactions. Companies should review and approve the related party transactions with reference to corporate governance best practices and the requirements in the CA.

Deter and detect corruption

A director's failure to disclose a conflict of interest not only attracts personal criminal and civil liabilities under the CA, it can also have serious consequences for the company's reputation and ability to fight corruption. Conflicts of interest can undermine the trust and confidence that shareholders, stakeholders, regulators and the public have in the integrity and professionalism of the director and the company.

Therefore, having effective policies and procedures to avoid, detect, disclose, handle and monitor conflict of interest situations is crucial for companies and organisations. A good conflict-of-interest policy should have clear and consistent definitions, principles and standards for what a conflict of interest is, how to report it, and how to deal with it.

Directors should be reminded to regularly (at least twice a year) update the declarations required under section 156 of the CA with guidance on situations that may be a conflict of interest, examples of improper conduct and relationships in areas that pose risks for to directors.

For example, services outside their board's duties should be examined carefully and assessed for competitive threats, competing resources, personal benefit and antitrust risks. Beyond the Section 156 requirements, directors should be prompted regularly

to abide by the corporate gifting guidelines to declare or seek approval of any gifts received by the directors from, or given by the directors to, any external parties which may create a conflict of interest in any dealings of the company.

Companies operating in an environment or industry prone to corruption may consider developing other mechanisms to detect breaches of their conflict-of-interest policies and processes, besides relying on self-declaration by their directors. Such mechanisms include conducting due diligence checks on their directors for any undisclosed shareholding interests or holdings in offices that place them in conflict with their duties as directors of a company.

A company may also consider appointing an independent auditor to work with its management and internal controls to detect those who do not comply with its conflict-of-interest policy and process.

Also, registrations and declarations of conflicts of interest and the arrangements for resolving the conflicts, should be clearly recorded in formal documents, so that the board of directors can show, if needed, that a specific conflict has been properly identified and managed.

Contravention of the conflict-of-interest policy and process should be dealt with and treated as a disciplinary issue (no matter if it is corruption or not) to discourage further recalcitrance. Effective sanctions must be applied, for example, reversing the decisions or contracts that were influenced by the conflict of interest. Further, creating a whistleblower mechanism where those who report violations of the conflict-of-interest policy are protected against reprisal would support the successful enforcement of the conflict-of-interest policy and process.

Conflict of interest is a pervasive and complex issue that can compromise the integrity, accountability and performance of directors and companies. If not managed well, this may lead to corrupt practices that will expose the directors and their companies to legal, reputational and operational risks, as well as potential criminal charges. A proactive approach towards addressing conflicts of interest among directors serves as a bulwark against corruption, safeguarding the long-term sustainability of a company.

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