



The Modern Approach to Global Conflicts of Interest

Contents

Complex relationships	4
Types of conflict	4
Consequences of unmanaged conflicts.....	5
Fail to prepare, prepare to fail	9
Leveraging technology to efficiently manage conflicts.....	10
Key components of effective declaration management systems.....	10
The Benefits.....	11
Conclusion.....	12
See What SAI360 has to Offer.....	12





Background

In an era of globalization, understanding and navigating conflicts of interest has never been more essential. With corporations expanding their operations and influence into numerous jurisdictions, the interactions between staff, vendors, and deals become multifaceted. Whether it's the employees working in diverse teams, vendors supplying from different corners of the world, or deals spanning multiple countries, the interconnectedness is evident.

While this interconnectedness and reach into larger markets undoubtedly presents businesses with unprecedented opportunities, they equally magnify potential pitfalls. One of the most pronounced risks is the presence of conflicts of interest. In its essence, a conflict of interest arises when an individual or entity's interests - be they personal, financial, or professional - have the potential to cloud their judgment. This can adversely affect their decisions or actions related to an ongoing or upcoming relationship.

At the heart of managing such conflicts lies the realm of Governance, Risk, and Compliance (GRC). In this tech-forward age, GRC programs have evolved to incorporate declaration management systems, which have proven invaluable in identifying and addressing conflicts of interest. These systems, powered by specialized software, bring efficiency and consistency to the otherwise daunting task of managing conflicts manually. They act as the backbone, ensuring every declaration undergoes thorough scrutiny and receives appropriate management.

In this eBook, we delve into the multifarious aspects of conflicts of interest. We'll uncover the inherent risks, the intricacies, and subsequently illustrate how leveraging modern GRC platforms can be the antidote to these challenges. Beyond merely managing conflicts, the goal is to harness these platforms to amplify operational efficiencies, thereby cultivating an environment of trust and transparency within an organization.

Understanding Conflict of Interest

Complex relationships

At a high level, there are three areas that organizations should consider when beginning to map out potential conflicts: staff, vendors and deals.

Staff

Central to the conundrum of conflicts of interest are staff – individuals who, in their professional capacities, are often obligated to declare potential conflicts. However, the labyrinth of modern business relationships means that these declarations are not always straightforward. Employees today interact with an intricate web that interlinks them with the company's vendors and deals, making the identification and management of conflicts all the more challenging.

Vendors

Vendors are an integral part of a company's operational framework, facilitating the seamless flow of goods and services. Yet, as businesses cast their nets wider in search of these vendors, especially in the global arena, the potential for conflicts inevitably escalates. It's plausible for an employee to have pre-existing ties with a vendor. Such connections, while often benign, can occasionally blur the lines of objectivity during vendor evaluations or contract discussions.

Deals

Deals stand as the milestones marking a business's trajectory. Whether it's the nuanced dance of mergers and acquisitions, the crafting of strategic partnerships, or everyday sales engagements, these transactions form the basis of commercial growth. But the globalized nature of today's deals introduces complexities. An employee brokering a deal might, unknown to many, have a personal stake in a participating company. Such situations lay the groundwork for potential conflicts, questioning the integrity of the transaction.



In essence, while staff are the nucleus of any organization, their interwoven personal and professional connections can be double-edged. On one side, these connections can fuel collaboration and innovation; on the other, they can create potential conflicts of interest. An overlooked personal bond, an undisclosed financial interest, or past affiliations might, on occasion, divert an employee's judgment from the company's best interests.

Types of conflict

Within the complex web of internal and external relationships that characterize large corporations, there are three significant types of conflict to look out for: financial, personal and professional.

Financial Conflicts

Financial conflicts arise when an individual or organization stands to gain or lose financially based on a decision or action with which they are involved. For example:

- An employee owning stock in a vendor company and being in a position to award contracts to that vendor.
- A decision-maker receiving kickbacks or bribes for favoring a particular deal or customer.
- A consultant recommending a specific solution from which they receive commission.

Personal Conflicts

Personal conflicts emerge when an individual's personal relationships or interests influence or have the potential to influence their professional decisions. For example:

- Hiring a family member or close friend for a role over more qualified candidates.
- Favoring a vendor or partner because of a personal relationship, even if they aren't the best fit for the organization.
- Making business decisions based on personal likes or dislikes rather than objective criteria.

Professional Conflicts

Professional conflicts occur when an individual's professional affiliations, obligations, or roles conflict with their responsibilities within their primary organization. For example:

- Serving on the board of two competing companies.
- Having a secondary role or job that conflicts with the interests of the primary employer.
- Recommending or endorsing products or services due to professional affiliations, rather than their merit.

Consequences of unmanaged conflicts

Compromised objectivity

Conflicts of interest, when not properly managed or addressed, can severely compromise an individual's or an organization's objectivity. Decisions that should be made based on merit, data, and the best interests of the firm can instead be swayed by personal or financial interests. This biased decision-making can lead to suboptimal outcomes, missed opportunities, and even financial losses.

Damage to reputation

The repercussions of unmanaged conflicts of interest aren't just internal. They can have a profound impact on how both individuals and organizations are perceived externally. When conflicts come to light, they can erode trust and confidence among stakeholders, clients, and the general public. This damage to reputation can have long-lasting effects, leading to lost business, decreased investor confidence, and even legal repercussions.



Regulatory action

At its core, the principle behind most conflict of interest regulations is transparency. Individuals and organizations are often required to disclose potential conflicts so that stakeholders can assess the risk and objectivity of decisions. While the specifics may vary, common regulations typically mandate:

- Full disclosure of financial interests that might influence decision-making.
- Withdrawal from decisions where a direct conflict exists.
- Periodic training and awareness programs to ensure all members of an organization understand their responsibilities.
- Regular audits and reviews to identify and manage potential conflicts.

RELEVANT REGULATIONS

Industry Agnostic

- **Sarbanes-Oxley Act (US):** Mandates transparency in financial reporting and requires companies to disclose potential conflicts among their auditors.¹
- **UK Bribery Act (UK):** Addresses bribery both domestically and internationally. It requires companies to have procedures in place to prevent bribery, which inherently involves managing conflicts of interest.²
- **Fair work (registered organizations) Act 2009 (APAC):** Mandates that officeholders and officials in registered organizations (Trade Unions and Employer Associations) disclose any material personal interests which may conflict with their duties, maintaining a register of interests for transparency. Prohibited conduct includes exploiting one's position or information for personal gain, with breaches incurring fines and potential disqualification. Ongoing obligations require continual disclosure updates and proactive management of conflicts.³

FINANCIAL SECTOR

- **Securities Exchange Act of 1934 and Investment Advisers Act of 1940 (US):** When offering advice or recommendations, firms are obligated to eliminate or otherwise address any conflicts of interest and not put their own ahead of their investors. The Securities and Exchange Commission (US) is proposing new rules to “eliminate or neutralize” certain conflicts of interest associated with firms’ use of predictive technologies.⁴
- **Markets in Financial Instruments Directive II (EU):** Requires financial advisors in the EU to disclose all potential conflicts of interest to their clients.⁵
- **Section 912A(1)(aa) of the Corporations Act (APAC):** Pertains to conflicts of interest within financial services entities. It imposes a duty on Australian financial services licensees (AFSL) to take reasonable steps to ensure that the licensee’s representatives comply with the law. This includes ensuring that representatives manage conflicts of interest effectively.⁶
- **Section 47(1)(b) of the National Credit Act (APAC):** Requires credit providers and lessors to comply with a duty to prioritize the interests of the consumer when there is a conflict of interest between the provider/lessor and the consumer. This duty is part of the broader consumer protection framework established by the National Credit Act to ensure fair and responsible lending practices in Australia.⁷



1. <https://www.sec.gov/Archives/edgar/data/917100/000119312512100695/d267494dex99codeeth.htm>

2. <https://www.legislation.gov.uk/ukpga/2010/23/contents>

3. https://regorgs.fwc.gov.au/sites/default/files/2022-03/cu005-conflicts-of-interest-compliance-update.pdf?_gl=1*edzub*_ga*MTAzMzAwMDUyNC4xNzA4MzIxMzQ5*_ga_SDYD1TM2YV*MTcwODMyMTM0OC4xLjAuMTcwODMyMTM0OC42MC4wLjA

4. <https://www.sec.gov/news/press-release/2023-140>

5. <https://www.esma.europa.eu/publications-and-data/interactive-single-rulebook/mifid-ii/article-23-conflicts-interest>

6. <https://asic.gov.au/for-finance-professionals/afs-licensees/limited-afs-licensees/limited-afs-licensees-complying-with-your-licensing-obligations/>

HEALTHCARE INDUSTRY

- **Physician Payments Sunshine Act (US):** Requires pharmaceutical and medical device companies to report payments made to physicians and teaching hospitals.⁸
- **Regulation (EC) No 726/2004 of the European Parliament (EU):** States that the members of the scientific committees and experts shall not have financial or other interests in the pharmaceutical industry that could affect their impartiality. They shall make an annual declaration of their financial interests. In addition, all indirect interests which could relate to the pharmaceutical industry shall be entered in a register held by the European Medicines Agency.⁹

REAL ESTATE AND CONSTRUCTION

- **Real Estate Settlement Procedures Act (US):** This act prohibits kickbacks and unearned fees in the real estate settlement process. It requires real estate agents and brokers to disclose any affiliations or business relationships they have with other service providers in the transaction, such as lenders, title companies, and inspectors. This is to ensure that consumers are not steered towards a particular service provider because of undisclosed financial ties.¹⁰
- **Federal Acquisition Regulation (US):** For construction firms bidding on federal projects, the FAR has provisions that require firms to disclose potential conflicts of interest. This ensures that the bidding process for federal construction projects is fair and transparent.¹¹

PUBLIC SECTOR

- **The Australian Public Services (APS) Code of Conduct (APAC):** States that an APS employee must take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment; and disclose details of material personal interest of the employee in connection with his/her APS employment [Section 13(7) Public Service Act 1999].

8. <https://www.psychiatry.org/psychiatrists/practice/sunshine-act#:~:text=The%20Physician%20Payments%20Sunshine%20Act,to%20physicians%20and%20teaching%20hospitals.>

9. https://health.ec.europa.eu/system/files/2016-11/reg_2004_726_en_0.pdf

10. <https://www.federalreserve.gov/boarddocs/supmanual/cch/respa.pdf>

11. <https://www.acquisition.gov/far/part-3>

Noteworthy examples

ENRON SCANDAL

One of the most infamous cases of unmanaged conflicts is the Enron scandal. Conflicts of interest among the company's auditors and consultants, combined with unethical business practices, led to one of the largest bankruptcies in U.S. history. The fallout damaged the reputations of not just Enron but also its associated firms and led to significant regulatory changes in corporate governance.¹²

VOLKSWAGEN EMISSIONS SCANDAL

In 2015, Volkswagen was found to have installed software in their diesel cars to cheat on emissions tests. This deliberate act, driven by the conflict between meeting emissions standards and promoting diesel sales, led to a massive blow to the company's reputation, billions in fines, and a significant drop in sales.¹³

UK GOVERNMENT'S COVID-19 CONTRACTING CONTROVERSY

Between March 2020 and March 2022, the UK government awarded £46.7 billion in pandemic-related contracts, many bypassing standard competitive tenders. The National Audit Office (NAO) highlighted a concerning 'VIP' channel, prioritizing companies with political affiliations. A notable controversy arose with Randox, receiving £777 million in contracts. A 2022 report criticized the Department of Health for overlooking clear conflicts of interest in relation to their deals with Randox.¹⁴

GLADYS BEREJIKLIAN

From 2012 to 2018, Gladys Berejiklian was found to have engaged in a 'secret relationship' with ex-Wagga Wagga MP Daryl Maguire whilst she was the Premier of the state of New South Wales. Within a final report published by the New South Wales Independent Commission Against Corruption (ICAC), it was made clear that Berejiklian had failed to declare the conflict of interest between her personal life and public duties. As a result, the watchdog concluded that the former Premier had breached public trust by approving multi-million dollar grants for the Australian Clay Target Association (\$5.5 million) and the Riverina Conservatorium of Music in Wagga Wagga (\$10 million, more was allocated, but never spent).¹⁵

¹² <https://www.investopedia.com/updates/enron-scandal-summary/>

¹³ <https://www.bbc.co.uk/news/business-34324772>

¹⁴ <https://www.nao.org.uk/reports/investigation-into-the-governments-contracts-with-randox-laboratories-ltd/>

¹⁵ <https://www.icac.nsw.gov.au/investigations/past-investigations/2023/former-nsw-mp-for-wagga-wagga-operation-keppel>

Fail to prepare, prepare to fail

A common misconception which perpetuates across much of the private sector is that disclosing conflicts of interest could result in punitive measures, including removal from a project or exclusion from specific roles. The reality can be much different, however. If organizations employ a structured approach to data gathering, record keeping and risk monitoring, potential conflicts can be effectively managed without resorting to such severe measures.

- **Data collection** - begin by documenting employee affiliations, both internally and with suppliers, to pinpoint potential risks. Whilst no firm can expect to attain perfect visibility over employee and third-party relationships, data collection - via forms or similar methods - is a vital first step. Firms may benefit from leveraging a common risk categorization across the firm as a means of classifying interests into familial, professional, or financial.
- **Management strategies** - each declaration of interest, even if it appears unproblematic, requires active management. Firms must establish a comprehensive system for recording and tracking all disclosures. This creates a crucial audit trail from which businesses can evaluate evolving associations which may become more significant as roles and organizational structures change.
- **Risk-based approach** - leverage the information collected until this point to inform project progress and refine mitigation strategies. Rather than adopting an all-or-nothing approach, adopt specific strategies like role-based limitations. For instance, restricting certain employees trading activities during a project may mitigate risks associated with insider trading.
- **Continuous Improvement** - Acknowledge that the initial data set is merely a baseline. Consistently enhance your knowledge base to uphold an efficient conflict of interest management system, adapting to new information and organizational shifts.

Firms need to be pragmatic in their approach to managing potential conflicts of interest. Given finite resources, it's impractical to extensively restructure teams solely for conflict prevention. The balanced approach outlined above recognizes the risks, limitations and resources of the organization, enabling compliance managers to develop a tailored strategy to manage and mitigate the impact of potential conflicts.

TOP TIP: When expanding this analysis to cover supplier associations, apply the 80 - 20 principle to concentrate on key relationships for maximal impact, while de-emphasizing minor ones.

Leveraging technology to efficiently manage conflicts

In today's digital age, using technology to manage conflicts in multinational corporations is essential. Declaration management systems are central in this transformation, offering an efficient way to address potential conflicts. These systems function seamlessly within the broader GRC framework, ensuring that potential conflicts are identified, recorded and addressed systematically.

Importantly, technology alone isn't the magic wand. Its efficacy is deeply rooted in the policies it seeks to enforce. A modern GRC framework demands an uncompromisingly clear, robust, and universally understood conflict of interest policy. To ensure global coherence in managing conflicts, organizations must establish:

Clear and Well-Communicated Policies

A detailed and transparent policy ensures every stakeholder, regardless of their position or location, understands conflict management protocols.

A Global Training Program

Beyond policies alone, training equips all associates with the knowledge to identify, understand, and disclose potential conflicts.

Robust Third-Party Risk Management

It's crucial to ensure that third parties are not only free from conflicts but also well-informed about the organization's ethical standards and policies.

Key components of effective declaration management systems

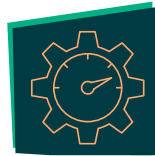
An efficient declaration management system is more than just software; it's a harmonious blend of multiple components working seamlessly to address potential conflicts. When choosing yours, look out for these features:

- **User-friendly interface:** At the heart of any system is its usability. A well-designed, intuitive interface ensures that employees, irrespective of their expertise level, can navigate with ease.
- **Customizable forms:** Recognizing that every industry and organization has its unique requirements, the adaptability of forms becomes pivotal. This ensures that the nuances and specifics of different sectors are adequately addressed.
- **Automated alerts:** In the vast corporate landscape, manual tracking can be cumbersome. Automated notifications act as vigilant sentinels, alerting the relevant stakeholders about potential conflicts or when a review becomes imperative.
- **Reporting tools:** Transparency is the linchpin of trust. Comprehensive reporting tools not only facilitate internal reviews but also play a critical role in maintaining regulatory compliance.
- **Integration capabilities:** In an interconnected digital ecosystem, the ability of a system to integrate with other GRC tools is paramount. This holistic approach maximizes the utility of declaration management, ensuring a comprehensive and unified view of risks across platforms and systems.
- **Secure data storage:** In an age of increasing cyber threats, the protection of sensitive information is non-negotiable. Robust data storage ensures the privacy and integrity of declarations.

TOP TIP: For organizations heavily reliant on professional services contracts and an integrated workforce, the most significant risk emerges from a lack of transparency among contractors and consultants. As a result, an effective conflict of interest solution must be able to assess and monitor external staff. Typically, their networks are documented manually, with signed, scanned, and uploaded documents, making the review of numerous procurement-related documents laborious. Implementing a digital solution can transform this process, allowing instant correlation of relationships to specific events.

The Benefits

The advantages of modern declaration management systems are manifold. Here are just some of the primary benefits:



Efficiency

Modern systems simplify the complex, making the declaration and review of potential conflicts swift and straightforward.



Transparency

Every declaration is logged and made accessible, ensuring clarity for all stakeholders, whether they are part of the organization or external entities.



Compliance

Navigating the maze of global and industry regulations becomes manageable, ensuring organizations remain on the right side of the law.



Risk Mitigation

By proactively spotting potential conflicts, organizations can act before minor issues become major crises.



Accountability

Clear mechanisms assign and track responsibility, ensuring that every identified conflict sees a resolution.

Conclusion

Declaration management systems are crucial components of the wider GRC framework. With modern technologies, these systems not only make compliance straightforward but also promote organizational transparency and bolster accountability. To truly optimize these systems, it's imperative for firms to ensure robust policies and training, and to embrace a technology transformation that encompasses all aspects of GRC. This means implementing a comprehensive suite or platform that seamlessly integrates risk management. This is precisely the approach taken by SAI360. By employing cutting-edge GRC technologies, firms can proactively address an array of potential challenges, benefiting from a holistic view of risks across the enterprise.

As mentioned throughout this eBook, employee training is also an important element of a successful conflicts of interest management strategy. Only SAI360 delivers conflicts of interest training within the module to provide learning in the flow of work. This preferred learning style improves completion rates, enhances efficiency, and drives behavior change.

See What SAI360 has to Offer

SAI360's software and learning expertise extends across governance, risk, compliance, and ethics. Our integrated approach allows you to take advantage of configurable solutions and quickly shape them to help you thrive in the evolving GRC landscape.

To learn more about the SAI360 platform and how we can provide you with the path to meet your conflict of interest goals, [contact us online](#) to set up a call with one of our representatives.

Our unified approach to risk sets us apart

Today's complex risk landscape demands more. SAI360 leads the way with an integrated GRC platform and Learning solution that spans the entire risk and compliance spectrum.

Risk Management Solutions

- Risk & Compliance Management Solutions
- Enterprise & Operational Risk Management
- Regulatory Compliance
- Policy Management
- Third-Party / Vendor Risk Management
- Internal Controls
- Internal Audit
- Incident Management
- Conflicts of Interest (COI)
- Gifts and Hospitality
- IT & Cybersecurity
- Business Continuity Management

Ethics & Compliance Learning Solutions

- Anti-Bribery & Anti-Corruption
- Competition & Anti-Trust
- Conflicts of Interest
- Data Protection & Privacy
- Exports, Imports & Trade Compliance
- Harassment & Discrimination