Conflict of Interest –
The Elephant in the Room or Storm in a Teacup?

Written by: Professor Ho Yew Kee, Member, 8th Charity Council
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Introduction

Singapore is a small country and based on the theory of six degrees of separation (6-degree rule), there is a chance that board members, management, staff or volunteers of charities are related or connected to vendors, suppliers or any other parties that the charities transact with. Taking this reality into consideration, how should charities deal with matters on conflict of interest (COI)? Is this an elephant in the room that compels charities to expand efforts and time to guard against or is this merely a storm in a teacup which charities simply accept and live with?

Trust in charity is most critical. Should public trust ever gets violated - arising from any misgivings or actual misconducts of board members, management, staff or volunteers, all the past good works of the charity may be written off. In addition, the loss of trust may severely threaten future operations and sustainability of the charity, particularly in fundraising.

This article provides an operational understanding of COI, possible reasons as to why this is a problem and articulates possible policies to address COI.

Understanding Conflict of Interests

The Singapore Code of Governance for Charities and Institutions of a Public Character (SCG Code) defines a COI as "*A situation where a Board member, staff, or other person with an existing or potential financial or other material interest that might impair his or her independence or objectivity in the discharge of responsibilities and duties to the charity*".

There are three key aspects to this definition:

- any person (board member, management, staff or any individuals) with power and authority to influence decisions of a charity as part of his or her responsibilities and duties;
- an existing or potential financial or material interest; and
- the independence and objectivity of the decision maker may be impaired.

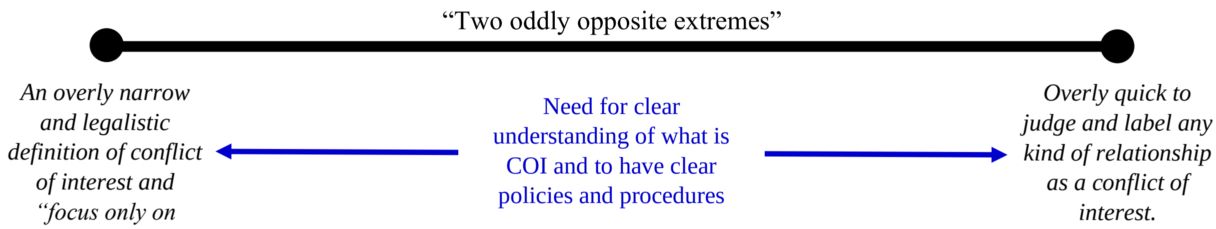
The SCG Code articulates the principle that board members and staff should act in the best interests of the charity. In addition, it encourages charities to have clear policies and procedures to declare, prevent and address COI.[1]

Charities can lean on two extremes in matters of COI. On one extreme, COI can be narrowly defined to focus only on actual or real financial gains accruing to the decision

[1] Principle 2, SCG Code.

maker in question. For example, it is not considered a COI if a board member of a charity sells goods at cost to the charity as there is no financial gain to the board member. In fact, it is argued that the charity derives benefits by purchasing goods or services at cost. Thus there is no financial disadvantage to the charity. On the other extreme, anything that occurs within any related relationship is deemed a COI. For example, reimbursement of out-of-pocket expenses to a board member who incurred authorized expenses like, hosting donors, on behalf of the charity is deemed a COI. Hence, the necessary COI procedure will have to be undertaken.

Figure 1 : Extremes interpretation of COI



Given this propensity to lean towards extremes, while relying on a dichotomous definition of COI, there is a need to have a clear understanding of what COI entails before writing clear policies and procedures to address it.

In helping us to have a clear understanding of COI, the following provide some of the key issues:

- Duty of Loyalty - Board members, management, staff and volunteers[2] owe a duty of loyalty to the charity. This means that they are to ensure that nothing they do will breach that duty of loyalty and cause actual or even perceived harm or disadvantage to the charity.
- Trust and Integrity - COI will result in a breach of trust if individuals are perceived to benefit or will benefit from transactions with the charity. The public love to hate hypocrites who stand to gain in organisations set up for the needy.
- Real or Perceived COI - Real COI can be easily identified as there will be an audit trail of benefits to specific individuals. However, perceived COI can be equally dangerous. While transactions that are obvious may come under suspicion as COI, those which are less obvious can do equal, if not more harm. Accumulated perception over time can become an accepted truth and this can cause lasting reputational damages. This is seen in the often-irreparable damages of fake news in media today.

[2] Some may argue that volunteers are free will agents and thus are not obligated to the charity. However, the moment these individuals sign up as volunteers, they are obligated to act in the interest of the charity. That is why a code of conduct for volunteers is crucial to remind them of this duty.

- More than financial gains or benefits - COI can occur when there are no actual financial gains but a lapse of governance, poor processes, or mismanaged perception. Take the case of volunteers taking home left over food after a charity event. Unless there is a clear procedure, such an act can be deemed as COI as volunteers would benefit from the food items meant for beneficiaries.

Possible Reasons for "Good People Doing Bad Things"

A key attribute of COI is the effect of the relationship on the independence of the individual in the decision making. It is often asked as to how can individuals who work or serve voluntarily in charities benefit themselves in COI? Another way of phrasing the question is : "How can good people make bad decisions?"

Case studies are replete with such contradictions. Serina Vash, a former US federal prosecutor and litigator put it most elegantly when she said : "When I first began prosecuting corruption, I expected to walk into rooms and find the vilest people. I was shocked to find ordinarily good people I could well have had coffee with that morning. And they were still good people who had made terrible choices."[3] Why is this the case? There are many possible reasons. Some of the more obvious reasons include:

- Rationalised motivation where individuals believed that it is not wrong or that there are strong and valid reasons to cut corners and to benefit from the COI. For example, an individual may reason that the COI will not move the needle with respect to the interest of the charity. In fact, the COI may benefit the charity in the long run.
- Moral licensing is a phenomenon when an individual believes that after all the good works he has done, he has the moral license to cut corners. For example, a founder of a charity believes that he earns the right for the charity to pay for his monthly newspaper subscription.
- Carelessness or absence of a corporate morale compass. From experience, it is often the case that individuals are not educated on COI and thus their careless actions became the undoing in the absence of clear COI guidelines, a corporate morale compass or tone from the top.

Policies and Procedures Governing COI

It is impossible to eradicate COI due to proximity (6-degree rule) and the symbiotic nature of relationships. For example, it is almost impossible to have a board member in a charity who does not sit on the board of another charity. All charities are sourcing for talents for their boards and involvement in other charities can be a signal of the capability of the potential board candidate.

Given this reality, there is a need to have clear policies and procedures to address instances of COI. The policy and procedure can follow a **3-Step** and **4A** approach.

[3] Quoted in "Welcome to the strange inner world of 'moral equilibrium'", Vera Cherepanova, The FCPA Blog, May 19, 2021.

Step 1 : **A**greement on the Definition of COI

Individuals must understand what a COI is and **agree** to its operating definition. Otherwise, despite referring to a common term, differing understandings to what COI is and means may be problematic.

Step 2 : **A**cknowledgement of One's Duty to Disclose COI

After having acquired a common understanding of COI, the next step is for an individual to **acknowledge** the existence of a potential or actual COI. This acknowledgement is generally in the form of a formal declaration. Even though the COI may be a potential or even perceived, the individual is obligated to acknowledge that it exists and submits himself to the COI procedure for further actions. This is a form of submission and humility to the overarching governance of the charity. This acknowledgement also ensures that a conflicted member cannot claim ignorant of the existence of the COI procedure.

Step 3 : **A**ppropriate **A**ctions in Handling Declared COI

Once a COI is declared by an individual, there must be a clear process which prescribes the **appropriate actions** to be taken to address the COI. It could even include a declaration by the board that the COI is noted but no further action is needed. For example, a charity wants to get rid of some old furniture that has no value but entails disposal costs. A board member volunteers to take away the furniture. This is a COI as others may claim that the board member benefits from the old furniture. An appropriate action is for the board to declare that the COI is acceptable since the furniture is of no value to the charity and their disposal entails cost. An appropriate action could also include the full abstention of the party involved in any deliberation or decision making on the issue under COI. For example, a board member wants to supply materials to a tender called by the charity. To address the COI, the board member will be excluded from any deliberation or decision-making pertaining to this tender if he plans to participate.

Clear COI policies and procedures must always include proper documentations on the acknowledgement of COI and the appropriate actions taken. This is to ensure that there is an audit trail if this COI is subsequently challenged. A common mistake made by charities is to rely on a mere declaration of COI which is falsely deemed to have addressed the concerns of the COI. This is insufficient especially when it is done towards year end as part and parcel of COI declaration. Acknowledging the existence of a COI is insufficient as there must be clear, documented and appropriate actions taken.

Conclusion

COI is part and parcel of the ethical challenges faced by charities and individuals. The tone from the top (board and management) is an important indicator of the seriousness of the charity towards ethical issues. A proper understanding of COI and having clear COI policies and procedures are imperative for a well governed charity. COI policies which are transparent and responsive to stakeholders are proven ways to garner trust and confidence in the charity. Charities must take appropriate action while in the clear to prevent the darkness of COI from taking over. If the latter happens, it would potentially drag them into an absolute mess!