



Xiamen National Accounting Institute
厦门国家会计学院



ASIAN DEVELOPMENT BANK
亚洲开发银行



Multilateral Cooperation Center for Development Finance
多边开发融资合作中心



China International Contractors Association
中国对外承包工程商会



Asian Infrastructure Investment Bank
亚洲基础设施投资银行

COI Risks in Corporate Practice

企业实践中的利益冲突风险

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关符

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- **Market development:** Obtaining contracts from clients through competitive bidding.
 - **Contract performance:** Project implementation. Cooperation with a large number of stakeholders, including the Owner, Engineer, relevant government regulatory authorities, banks, insurance companies, consulting firms, suppliers, subcontractors, local communities, etc.
 - **Risk management:** Various risks including political, economic, legal, compliance, health, safety, quality, environmental, technical, public security, terrorist threats, community, public opinion, etc., including "conflict of interest" risks within compliance.
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- **市场开发:** 通过投标竞争从客户处获得合同
 - **合同履约:** 项目实施, 与业主、监理、相关政府主管机构、银行、保险公司、咨询公司、供货商、分包商、当地社区等大量利益相关方的合作
 - **风险管理:** 政治、经济、法律、合规、健康、安全、质量、环保、技术、治安、恐袭、社区、舆情等各类风险, 包括合规中的“利益冲突”风险

- **Capital-intensive:** Infrastructure projects require substantial capital investment.
 - **Labor-intensive:** A large number of personnel are involved in project construction.
 - **Risk-intensive:** Due to the social and natural environment and the presence of numerous stakeholders.
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- **资金密集:** 基础设施项目需要大量资金投入
 - **人员密集:** 大量人员参与项目建设
 - **风险密集:** 社会、自然环境、大量利益相关方

Common Misunderstanding About Conflicts of Interest

对于利益冲突的常见误解

- **Misunderstanding:** Any existence of a conflict of interest constitutes a violation.
- **Clarification:** A conflict of interest itself does not directly constitute misconduct.
 - Taking ADB policy as an example: misconduct occurs only when a party fails to (i) properly disclose and (ii) take reasonable measures to manage the conflict of interest to the ADB's satisfaction.
- **误解：**只要存在利益冲突，就是违规
- **澄清：**利益冲突本身并不直接构成违规行为
 - 以亚行制度为例，未能 “（i）适当披露并（ii）采取合理措施管理利益冲突以使亚行满意” 时才构成违规行为

Scenario 1: Affiliated companies bidding for the same project simultaneously.

If two companies share common control, a parent-subsidiary relationship, or have cross-appointed personnel, and simultaneously participate in bidding for the same MDB-financed project without disclosure, this constitutes a typical case of undisclosed conflict of interest.

场景一：关联企业同时投标同一项目

如果两家企业存在共同控制关系、母子公司关系，或者存在人员交叉任职，却同时参与同一多边银行项目的投标而未作披露，就构成了典型的利益冲突未披露情形。

Scenario 2: Association with a consultant.

If a consulting firm participates in project design or bid document preparation, and an affiliate of that firm subsequently participates in bidding for goods or works under that project, a conflict of interest may arise.

场景二：与咨询方存在关联

如果一家咨询公司参与项目设计或招标文件编制，而该公司的关联方随后参与该项目项下的货物或工程投标，就可能形成利益冲突。

Scenario 3: Association between internal personnel and bidders.

If staff of the bank or the owner involved in bid evaluation have kinship, prior commercial cooperation, or financial interests with a bidding company.

场景三：企业内部人员与投标方存在关联

如果参与招标评审的银行或业主方工作人员，与某家投标企业存在亲属关系、过往商业合作关系或经济利益关系。

Scenario 4: Grey areas in agency or consulting relationships.

If an agent, consultant, or intermediary engaged by a company simultaneously maintains undisclosed relationships with the tendering party, evaluation party, or other bidders, this may also constitute a conflict of interest.

场景四：代理或咨询关系的模糊地带

企业聘请的代理商、顾问或中间人，如果同时与招标方、评审方或其他投标方存在未披露的关系，也可能构成利益冲突。

- **"Disclosure" is an obligation; "management" is a capability.**
 - It is not enough for a company to just have a disclosure policy; it must also have a closed-loop management mechanism for assessment, handling, and follow-up.
- **The outcome of conflict-of-interest management may affect the severity of sanctions.**
 - Based on investigation findings, measures taken to manage conflicts of interest may be considered as aggravating or mitigating circumstances. In other words, proactive detection, proactive disclosure, and proactive remediation can serve as important grounds for companies to seek mitigated penalties during investigations.
- **“披露”是义务，“管理”是能力。**
 - 企业仅有披露制度还不够，要有评估、处理、跟踪的闭环管理机制。
- **企业对利益冲突的处理结果可能影响制裁轻重。**
 - 依据调查结果，为管理利益冲突而采取的措施可能被视为加重或减轻情节。
 - 主动发现、主动披露、主动整改，可以成为企业在接受调查时争取减轻处罚的重要依据。



Recommendations for Companies: From Passive Compliance to Active Management

建议：从被动合规到主动管理

Conflict-of-interest management cannot stop at "not violating rules"; it requires establishing mechanisms for proactive identification, declaration, and management.

利益冲突管理不能仅停留在“不违规”的层面，企业需要建立主动识别、申报和管理的机制



建议：从被动合规到主动管理

Recommendation 1: Establish a "conflict-of-interest screening checklist" before bidding.

Before participating in each project bid, conduct a thorough review of interests among the participating team, affiliated companies, agents, and key personnel, and maintain written records. This is not a one-time exercise but a "one-bid-one-check" process.

建议一：在投标前建立“利益冲突筛查清单”。

每次参与项目投标之前，对参与团队、关联企业、代理商、关键人员逐一进行利益关系排查，形成书面记录。这不是一次性的工作，而是“一标一查”。

建议：从被动合规到主动管理

Recommendation 2: Carefully study the bidder disclosure obligations stipulated in the tender documents, and clearly define the scope and content of information to be disclosed. If there are questions about the scope of disclosure obligations, request written clarification from the owner during the bidding phase. This is both an exercise of rights and a necessary procedure to reduce risks.

建议二：仔细研读招标文件所规定的投标人披露义务，明确应披露的信息范围与内容要求。如果对披露义务的范围有疑问，应在投标阶段以书面形式要求业主作出澄清。这既是行使权利，也是降低风险的必要程序。

Recommendation 3: Embed conflict-of-interest disclosure clauses into contracts and authorization documents.

When signing contracts with agents, subcontractors, and consultants, explicitly stipulate their conflict-of-interest disclosure obligations, and make this a continuing contractual duty rather than a one-time commitment.

建议三：将利益冲突披露条款嵌入合同和授权文件。

在与代理商、分包商、顾问签署合同时，明确约定其利益冲突披露义务，并将其作为持续性的合同义务，而非一次性承诺。

Recommendation 4: Establish internal reporting and escalation mechanisms.

When employees identify potential conflicts of interest, there should be clear channels for reporting upwards; for complex situations, they should be able to quickly obtain professional opinions from the compliance department or even external legal counsel.

建议四：建立内部报告和升级机制。

企业员工发现潜在利益冲突时，应有明确的渠道向上报告；对于复杂情形，应能快速获得合规部门甚至外部法律顾问的专业意见。

Recommendation 5: Preserve all evidence of "proactive actions."

If the company takes measures such as screening, disclosure, recusal, or remediation, ensure that complete written records are maintained. These records may serve as critical materials for seeking mitigated penalties during MDB investigations.

建议五：保存一切“主动作为”的证据。

如果企业采取了筛查、披露、回避、整改等措施，务必保存完整的书面记录。这些记录在多边银行调查时，可能成为争取减轻处罚的关键材料。

Recommendation 6: Establish an internal compliance declaration system.

Provide regular training for personnel in key positions and establish an internal conflict-of-interest declaration system — so that every person involved in bidding and project execution understands: when in doubt about whether a conflict of interest exists, disclosure is always the best choice.

建议六：建立内部合规申报制度。

对关键岗位人员进行定期培训，建立内部的利益冲突申报制度——让每一位参与投标和项目执行的人员都清楚：当你对是否存在利益冲突存有疑问时，披露永远是最好的选择。