

Conflicts of Interest in the Private Sector and the Significance of the Public Interest Test

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Abstract : Conflicts of interest is an elusive, diverse and engaging subject, a cross-cutting problem of governance; all levels of governance, ranging from local to global, public to corporate or financial sectors. In all these areas, its mismanagement could lead to the distortion of decision-making processes, corrosion of trust and the weakening of administration. According to Professor Peters, an expert in the area, conflict of interest, a problem at the root of many scandals has "become a pervasive ethical concern in our professional, organisational, and political life". Conflicts of interest corrode trust, and like in the public sector, trust is mandatory for the market, consumers/clients, shareholders and other stakeholders in the private sector. However, conflicts of interest in the private sector are distinct and must be treated in like manner when regulatory efforts are made to address them. The research looks at identifying conflicts of interest in the private sector and differentiating them from those in the public sector. The public interest is submitted as a criterion which allows for such differentiation. This is significant because it would for the use of tailor-made or sector-specific approaches to addressing this complex issue. This is conducted through extensive review of literature and theories on the definition of conflicts of interest. This study will employ theoretical, doctrinal and comparative methods. The nature of conflicts of interest in the private sector will be explored, through an analysis of the public sector where the notion of conflicts of interest appears more clearly identified, reasons, why they are of business ethics concern, will be advanced, and then, once again, looking at public sector solutions and other solutions, the study will identify ways of mitigating and managing conflicts in the private sector. An exploration of public sector conflicts of interest and solutions will be carried out because the typologies of conflicts of interest in both sectors appear very similar at the core and thus, lessons can be learnt with regards to the management of these issues in the private sector. Conflicts of interest corrode trust, and like in the public sector, trust is mandatory for the market, consumers/clients, shareholders and other stakeholders in the private sector. This research will then focus on some specific challenges to understanding and identifying conflicts of interest in the private sector; origin, diverging theories, the psychological barrier to the definition, similarities with public sector conflicts of interest due to the notions of corrosion of trust, 'being in a particular kind of situation,' etc. The notion of public interest will be submitted as a key element at the heart of the distinction between public sector and private sector conflicts of interests. It will then be proposed that the appreciation of the notion of conflicts of interest differ according to sector, country to country, based on the public interest test, using the United Kingdom (UK), the United States of America (US), France and the Philippines as illustrations.

Keywords : conflicts of interest, corporate governance, global governance, public interest

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