5. Conflict of Interest - Ethics

SEBI committee recommends overhaul of conflict-of-interest framework - What is it and how will it improve transparency? Triggered by conflict-of-interest allegations, a SEBI High-Level Committee has proposed a stricter probity framework, mandating public asset disclosures, restricting investments to pooled schemes for senior leadership, and enforcing a two-year "cooling-off" period to restore regulatory integrity.

1. Context and Background

Trigger for Review

Allegations - The review was triggered by the Hindenburg Research report, which alleged that the former SEBI Chairperson had financial links to entities under investigation.

Systematic Review - Consequently, SEBI initiated a systematic review to address these allegations of ethical misconduct.

Identified Gaps - The incident highlighted critical probity gaps in the existing framework regarding -

1. Asset disclosure.
2. Recusal norms.
3. Investment restrictions for senior leadership.

The Stakes - The core issue is Regulatory Integrity. Unchecked conflicts undermine investor trust in capital markets and weaken the credibility of the regulator.

2. Key Recommendations of the High-Level Committee (HLC)

The HLC proposed a multi-tier conflict-of-interest framework covering various aspects of SEBI's functioning.

Disclosure and Declarations

Public Disclosure -

Mandatory for - Chairperson, Whole-Time Members (WTMs), and Chief General Manager (CGM) level officers.

Requirement - They must publicly disclose their assets and liabilities.

Internal Disclosure -

Mandatory for - All SEBI employees, Chairman, and Board members.

Requirement - Must disclose names/relationships of relatives (as per Companies Act, 2013) alongside professional and relational interests.

Conflict of Interest Declaration - It is mandatory to disclose actual, potential, and perceived conflicts both at the time of appointment and throughout the tenure.

Expanded Definition of Family - To avoid loopholes, the definition now includes the spouse, dependent children, and individuals dependent or under guardianship.

Investment and Trading Norms

Uniform Standards - Establishment of uniform investment and trading restrictions for the Chairperson, WTMs, and employees under the SEBI Employee Service Rules.

Permissible Investments - Members and staff are restricted to investing only in professionally managed pooled schemes (e.g., Mutual Funds) that are regulated by financial sector regulators.

Treatment of Existing Investments - Upon joining, the Chairperson and WTMs have three options regarding existing investments -

1. Liquidate them.
2. Freeze them.
3. Sell them (with or without a trading plan).

Part-time Members - They are exempt from the strict pooled-scheme rule.

Condition - They must disclose holdings and strictly avoid trading based on Unpublished Price-Sensitive Information (UPSI).

Exemptions - ESOPs and unlisted private business holdings of spouses are exempt.

Structural and Procedural Safeguards

Gift Ban - A complete prohibition on accepting gifts from any person or entity dealing officially with SEBI.

Recusal Disclosure - The Annual Report must publish a summary of recusals made by SEBI leadership to ensure transparency.
Cooling-off Period - A two-year ban on appearances before or against SEBI after leaving office, including disclosure of negotiations for future employment.
Whistle-blower System - Implementation of a secure, confidential, and anonymous reporting channel accessible to employees, intermediaries, and the public.

Institutional Oversight & Enforcement

Office of Ethics and Compliance (OEC) - A dedicated office to be established.
Chief Ethics and Compliance Officer (CECO) - A new position at the rank of Executive Director to head the OEC.
Oversight Committee - Establishment of an Oversight Committee on Ethics and Compliance (OCEC).
Legally Enforceability - The Board may implement a separate set of regulations for Board Members regarding disclosure/conflict management. This shifts the framework from "voluntary adoption" to a legally enforceable code.
Ethics Training - Tailored programs for all levels involving testing of knowledge and application to foster a culture of ethical conduct.

3. Understanding Conflict of Interest (CoI)

Definition - A situation in public life where official duties, public interest, and personal interest collide.
Risk - Public decisions may be influenced (actually or seemingly) by private considerations.
Core Dynamics -
Competing Priorities - A clash between the duty to act impartially and personal/organizational ties.
Priority Distortion - Decision-making becomes ethically contaminated when personal benefits (financial, familial, positional) influence judgment.
Ethical Risk - Even without wrongdoing, the mere perception of bias weakens institutional legitimacy.
Example - The Managing Director of ANIIDCO (Andaman and Nicobar Islands Integrated Development Corporation) simultaneously serving as the Secretary for Environment and Forests (responsible for granting clearances).

Sources of Conflict of Interest

1. **Financial Interest -** Prioritizing personal financial gain over public duty (e.g., preferring private sector jobs for monetary benefits).
2. **Professional Interest -** Dilemmas where professional obligations clash with personal beliefs (e.g., a judge's personal view on the death penalty vs. the law).
3. **Personal Interest -** Influence of family or prejudices on official duties.

Example - A former High Court judge joining a political party immediately after retirement, raising doubts about past impartiality.

4. **Public Sector Vulnerability -** High exposure due to authority over licensing, enforcement, sanctions, and resource allocation.

Example - An Urban Development Authority official overseeing land approvals while holding stakes in a real estate company.

4. Comparison - Actual vs. Potential vs. Perceived CoI

Dimension	Actual Conflict of Interest	Potential Conflict of Interest	Perceived Conflict of Interest
Meaning	Personal interest is currently influencing or has already influenced official duty.	Personal interest may influence official duty in the future; the risk is emerging.	The public believes personal interest is influencing decisions, even if no real conflict exists.
Status	Real, ongoing, and demonstrable.	Hypothetical but plausible; Future-oriented.	Based on appearance, assumptions, or associations.

Ethical Risk	High - Directly compromises integrity, fairness, and legality.	Medium - Creates vulnerability; may evolve into actual conflict.	High - Erodes public trust even without actual wrongdoing.
Impact	Leads to biased decisions, favouritism, or misconduct.	Creates hesitation, bias risk, or self-censorship.	Undermines the legitimacy of decisions and institutions.
Example	A regulator holding shares in a company they are investigating.	A regulator's spouse is likely to take a senior job in a regulated company.	A retired judge joining a political party immediately after key judgments.
Action	Mandatory divestment, recusal, or removal.	Pre-emptive disclosure, monitoring, or reassignment.	Transparency, clear communication, and recusal to maintain credibility.

5. Forms and Manifestations of Conflict of Interest

Self-Dealing - Officials running private businesses and making decisions that prioritize personal gain.
Revolving Door Politics - The movement of individuals between regulatory roles and industry positions, often leading to "regulatory capture" or policies shaped for personal advantage.
Family Interests (Nepotism) - Employing relatives or engaging with family-owned firms.
Regulatory Roles - Biased enforcement to benefit known parties (e.g., a transport officer ignoring a relative's logistics firm).
Post-Retirement Jobs - Making favorable decisions while in office in exchange for future employment offers.
Favouritism - Includes clientelism, cronyism, and nepotism, where power is used to favor connections over merit.

6. Public Interest and Civil Service Principles

Definition of Public Interest - The collective well-being and general welfare of the community. It implies decisions that benefit the majority and uphold constitutional values.
Quote - "The public interest is what the people would choose if they saw clearly, thought rationally, and acted selflessly." — John Rawls

Principles to be Followed

1. **Impartiality and Objectivity -** Decisions must be free from bias/political influence.
Example - T.N. Seshan enforcing election rules equally on all parties.
2. **Transparency and Accountability -** Truthful disclosure and answerability.
Example - RTI Act implementation.
3. **Responsiveness -** Services designed for the common people/marginalized.
Example - IAS officer Armstrong Pame building the "People's Road" in Manipur without government funds.
4. **Integrity and Honesty -** Personal interest never overrides public good.
Example - E. Sreedharan (Metro Man) refusing privileges and ensuring integrity.
5. **Rule of Law and Equity -** Promoting equal access to justice.
Example - Non-discriminatory delivery of MGNREGA.

7. Ethical Dilemmas and Impact

Types of Ethical Dilemmas

Clash of Two Right Choices - Choosing between two morally justifiable options.
Public Duty vs. Personal Values - Official responsibility contradicting personal morals.
Ambiguity - Unclear or outdated rules forcing reliance on personal judgment.
Perception vs. Integrity - Doing the right thing vs. appearing to do the right thing.
Short-Term vs. Long-Term - Expediency vs. Sustainability.
Justice vs. Compassion - Strict rule enforcement vs. humanitarian grounds (e.g., Traffic challan vs. Ambulance).
Obedience vs. Moral Responsibility - Superior orders vs. Conscience (e.g., Tehsildar refusing illegal land allotment).

Impact on Governance

Erodes Objectivity - Decisions drift from evidence-based reasoning.
Undermines Trust - Reduces faith in the fairness of the system.
Encourages Corruption - Creates a nexus for quid-pro-quo and abuse of power (e.g., ED raid on Bihar official).
Distorts Resource Allocation - Diversion of funds to private beneficiaries (e.g., Road contracts awarded to minister-linked firms).
Administrative Paralysis - Fear of scrutiny leads to risk aversion; conversely, favouritism leads to delays.
Damages Culture - Signals tolerance for unethical practices, lowering morale.

8. Resolution Mechanisms

Mandatory & Continuous Disclosure - Regular filing of assets and interests to allow pre-emptive scrutiny (as proposed by SEBI HLC).
Strict Recusal - Stepping aside from decisions involving personal ties (e.g., CCI members recusing themselves).
Ethical Codes - Development of a formal Code of Ethics (recommended by ARC-II) and adherence to Conduct Rules.
Cooling-Off Periods - Mandatory waiting periods to prevent exploitation of insider knowledge.
Independent Oversight - Bodies like Lokpal and Lokayuktas to investigate allegations.
Whistle-blower Protection - Secure, anonymous channels for reporting.
Training - Cultivating values of "Integrity, Objectivity, and Probity" through simulations and education.
Source - https - //indianexpress.com/article/explained/explained-economics/sebi-committee-overhaul-conflict-interest-framework-10362750/