

Conflicts of Interest

A、General Law Fiduciary duty (of trust and confidence):

- **Directors** must **avoid conflicts of interest** **Aberdeen Railway Co v Blaikie Bro**
【要避免任何 conflict】

Breach fiduciary duty even if:

they did not make a profit
their company did not suffer any loss
the contract was a fair one
whether the director had fraudulent motives 无论是否有欺诈

(要求很严格, 只要有利益冲突, 合同均无效!)

- Fiduciary (Directors) must not place themselves in position where **duty** and **interest** conflict **Phipps v Boardman (1967)**

Company can **avoid** a contract where a D is involved with the other party

- **Liability can be avoided** if: **Full disclosure** to **members**, and
【免责的条件】 **Member approval** of the conflict
- General law requirement **can be modified by constitution** to require full disclosure and board approval **Woolworths v Kelly (1991)** 【GL 可更改】

B、Statute Law duty:

S182(1)—**Directors, Officers, Employees** must not **improperly use position** to:

- a) gain advantage for themselves or someone else, or
- b) cause detriment to the company 损害

S183(1)—D, O, E must not **improperly use information** obtained from position to:

- a. b. 同上

S191—disclosure of **material personal interest** to **board**

S208—disclosure of **related party transaction** to **members**

A vs B-> Statute 范围更广: ① D+ O+ E; ② 不只是自己, 为他人牟利也不行 S208

General Law (fiduciary duty) & Statute Law (分开四条) have different obligations

详解

1、**S182**-- Not "improperly" use **position**:

- Use of **position** in breach of the duty owed to the company
- Even purporting to act in the best interest & with honesty **Chew v R**
即使想是好的, 但没做到, 也是 breach
- risk **outweigh** potential benefits and could have been **avoided** **ASIC v Maxwell**
让公司违反公司法, 但风险会比可能的利益大且这些风险本可以避免
- a **dormant shell** 看到潜在的损害行为都不加以阻止

Peso Silver Mines v Cropper Taking opportunity as a **public investor** (personal capacity), not as a D/ O/ Employee of the company. 是可以的

2、**S183**—Not "improperly" use **information**

- Use of information (**confidential** 机密的) in breach of duty [而↓无“机密”要求]
- obtained by reason of **position** as D/ O/ E of the company **ASIC v Vizard**
- **resign**, improper use information to compete with the former employer
Armstrong World Industries (Australia) Pty Ltd v Parma 辞职了而反咬一口
- use info about **insolvency**, to gain advantages over the creditors **Grove v Flavel**
- use confidential information to **invest**, make a gain or avoid a loss **ASIC v Vizard**

3、**S182 & 183** – “**gain advantage**” OR “**cause detriment**”

Not necessary that an advantage or detriment occurs 不一定实际发生, 潜在就算

Chew v R; **Green v Bestobell Industries Pty Ltd** ←竞标

- person must **intend** that a result should ensue (跟着发生), and
- person must **believe** that the intended result would be an ad or a detriment

4、**S182(2) & 183(2)** – extended application to a “**person involved**” 违反 (S79)

S79-- **Involvement in contraventions** **ASIC v Somerville (2009)** ↑

A person, have knowledge of the fact 明知违反了 S183& 183 还 involved, 则要 liable for the contravention if, and only if, the person: