

## Corporate Ethics Policy

### Introduction

Directors are subject to certain stringent legal requirements regulating their conduct, both in terms of their internal conduct as Directors and in their external dealings with third parties both on their own behalf and on behalf of the Company.

To assist Directors in discharging their duty to the Company in compliance with the relevant laws to which they are subject, the Company has adopted a Corporate Ethics Policy (**Policy**).

This Policy sets out rules binding Directors in respect of:

- (1) a Director's legal duties as an officer of the Company;
- (2) a Director's obligations to make disclosure to the ASX, the TSX and the market generally; and
- (3) dealings by Directors in shares in the Company.

### Directors' powers and duties

Each Director is required to comply strictly with the legal, statutory and equitable duties as an officer of the Company. Broadly, these duties are:

- (4) to act in good faith and in the best interests of the Company;
- (5) to act with due care and diligence;
- (6) to act for proper purposes;
- (7) to avoid conflicts of interest or duty; and
- (8) to refrain from making improper use of information gained through the office of Director, or taking improper advantage of the office of Director.

### General

Directors owe a variety of duties to the Company which may affect the appropriateness of their attendance at, and participation in, meetings of the Board. These duties arise as a result of the general law and also under the *Corporations Act*.

The Directors should be aware that if they breach their fiduciary duties to the Company, they may be liable to account to the entity for any profit they derive or to indemnify the entity against any loss their breach has caused.

Breaches of the *Corporations Act* duties may also give rise to an action for damages, fines and penalties or disqualification.

#### *Common law fiduciary duties*

A director is said to be in a fiduciary, as opposed to an arm's length, relationship with the Company. As such a Director will owe various fiduciary duties to the Company which underlie matters relating to the conduct of a Director, including attendance at, and participation in, meetings. The positive duties of a Director include the duty to act in good faith in the best interests of the Company, to act for proper corporate purposes and to give adequate consideration to matters for decision and to keep discretions unfettered.

#### *Corporations Act*

A Director will also be subject to duties imposed by the *Corporations Act*. They include the duty to exercise care and diligence, to exercise their powers in good faith and for a proper

purpose and not to misuse their position or information obtained from their position to gain an advantage for themselves or others or cause detriment to the Company.

### **General duties of Directors**

#### **(a) Proper corporate purpose**

*General law duty - to act for proper corporate purposes*

The duty to act for proper corporate purposes requires Directors to exercise the powers granted to them for the purpose for which they were given, not for collateral purposes.

#### **(b) Adequate consideration**

*General law duty – to give adequate consideration and duty not to fetter a director’s discretion*

The duty to give adequate consideration to matters for decision and to keep discretions unfettered requires Directors to give adequate consideration to matters when exercising their discretion. They must take positive steps to inform themselves about matters and not simply acquiesce in the decision making process.

#### **(c) Care and diligence**

*General law and Corporations Act duty – to act with a reasonable degree of care and diligence in exercising a director’s powers and discharging a director’s duties*

Under the *Corporations Act*, a Director must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- (1) were a director of a company in the same circumstances as the Company; and
- (2) occupied the same office and had the same responsibilities as the Director.

Case law on these provisions illustrates that the scope of the obligation of care and diligence will depend upon the nature of the director’s role and his or her position with the Company. For instance, generally executive directors will be subject to a higher standard of care and it has been held that a chairperson of a company who is also chairperson of the company’s audit and risk management committee may have a higher duty of care than a mere non-executive director.

Apart from the *Corporations Act* obligation, a failure of a Director to act with a reasonable degree of care and diligence is also likely to be considered negligent.

#### *Business Judgment Rule*

The *Corporations Act* and the common law of Canada provides for a mechanism for directors to avoid a breach of their duty of care and diligence where certain parameters are met. This is known as the “business judgment rule”. All Directors are expected to be familiar with this rule.

In summary, a Director who makes a business judgment is taken to meet the duty of care and diligence (whether under statute or the general law) if they:

- (1) make the judgment in good faith and for a proper purpose;
- (2) do not have a material personal interest in the subject matter of the judgment;
- (3) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- (4) rationally believe that the judgment is in the best interests of the corporation.

The Director’s or officer’s belief that the judgment is in the best interests of the corporation is a rational one unless that belief is one that no reasonable person in their position would hold.

A 'business judgment' is any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.

Whilst the business judgment rule assists directors to avoid a breach of their duty of care and diligence under both the *Corporations Act* or under the general law, it does not relieve breaches of the other duties of directors, whether under the *Corporations Act* or otherwise, described above.

(d) **Act in good faith**

*General law and Corporations Act duties:*

- (1) *to act in good faith in the best interests of the company;*
- (2) *to act for a proper purpose;*
- (3) *not to improperly use the director's position; and*
- (4) *not to improperly use information obtained by virtue of the director's position.*

The duty to act in good faith in the best interests of the Company requires Directors to use their discretion honestly and with reasonable care and diligence for the purposes for which it was conferred. A Director must not promote his or her personal interest by making or pursuing a gain in circumstances in which there is a conflict, or a real possibility of a conflict, between his or her personal interests and those of the Company. Additionally, a Director must not act to promote the interest of a third person where there is a conflict, or a real possibility of conflict, between their fiduciary duties to the Company and any duties owed to the third person.

**Avoiding conflicts**

***Attending and participating in Board meetings***

The duties in relation to conflict are of particular importance when a Director is considering whether or not they should attend and participate in Board meetings.

This rule requires a Director to avoid situations in which there is a "real and sensible possibility" of conflict between the Director's personal interests and the Company's interests. This duty is also of particular significance where Directors hold multiple directorships. Whilst merely holding multiple directorships, even in competing companies, is not a breach of the rule against conflict, the rule will be breached if the Director discloses confidential information which the Director has gained as a result of their directorship of the other company.

Consequently, if a Director has a conflicting personal interest, whether direct or indirect, in a matter to be discussed a meeting of the Board, they should first disclose this matter to the Board and then consider whether participating in the matter would result in a breach of their fiduciary duties.

***Material personal interest***

A Director who has a material personal interest in a matter that relates to the affairs of the Company is required to disclose this to the Company.

Directors who have a material personal interest in a matter generally must not attend a meeting of the Board whilst that matter is being considered or vote on the matter. However, a Director may do these things if a resolution of the Board is passed to this effect or if ASIC has given its consent.

Despite this, the same caution must be exercised as discussed above if the other Directors consent to the conflicted Director participating in the meeting. The conflicted Director should ensure that participation won't be in breach of their fiduciary duties or the duties imposed by the *Corporations Act*

### ***Common directorships***

These duties become particularly relevant where companies have directors in common and a decision involving a potential conflict of interest is required to be taken by one of the companies. In this case, it will generally be prudent for a director who is on the board of both companies not to participate in the decision making process of either company on that matter.

### ***Directors providing services to the Company***

In order to capitalise on the professional/technical expertise or experience of the Directors of from time to time (other than in their capacity as Directors), the Company may engage the services of a Director (or a firm associated with the Director) **only** on the following terms and conditions:

- (a) the scope of the consultancy (or other services) is identified, together with a schedule of estimated costs and charge-out rates to be incurred with the Director or their firm;
- (b) (where considered necessary or appropriate) the Board seeks additional quotations for the same services; and
- (c) the consultancy services are approved by the Board.

### **Confidentiality**

The Directors will have access to any information which the Directors may consider necessary to perform their responsibilities and exercise their independent judgment when making decisions. All information received by a Director in these circumstances must be considered confidential and at all times remains the property of the Company.

Any confidential information of the Company acquired by a Director during the Director's appointment must not be disclosed by the Director, or the Director must not allow it to be disclosed, to any other person unless the disclosure is authorised by the Chairperson or is required by law or regulatory body (including a relevant stock exchange).

### **Independence**

The Board is required to regularly (and in any event, at least annually) assess the independence of Directors to ensure that Directors do not have any relationship or interest that interferes with their unfettered and independent judgment, or could reasonably give the impression that the Director's independence has been compromised.

Set out in **Error! Reference source not found.** is the Corporate Governance Committee Charter under which the Corporate Governance Committee is charged with assessing the independence of each Director on behalf of the Board.

Directors are required to co-operate fully with any assessment process and give all reasonable information requested.

Directors are also required to fully and frankly tell the Board about anything that:

- (1) may lead to an actual or potential conflict of interest or duty;
- (2) may lead to a reasonable perception of an actual or potential conflict of interest or duty;
- (3) interferes with a Director's unfettered and independent judgment; or
- (4) could reasonably give the impression that a Director's independence has been compromised.

Directors are also required to tell the Company about any interest which they may have in securities of the Company (or of a related body corporate) or interest in any contract relating to those securities. This is discussed in greater detail below.

### **Dealings by Directors in Securities of the Company**

The Company has adopted the Trading Policy set out in **Error! Reference source not found.** which is designed to ensure that Directors and others associated with the Company do not deal in Securities of the Company at inappropriate times or in inappropriate circumstances.

### **Notification to ASX of Directors' interests**

Directors must also be aware that pursuant to the provisions of the *Corporations Act* they are obliged to provide the ASX with appropriate notifications of their interests in the Company.

Pursuant to section 205G of the *Corporations Act*, Directors must notify the ASX of their:

- (a) relevant interests in securities of the Company or of a related body corporate;
- (b) contracts:
  - (1) to which the Director is a party or under which the Director is entitled to a benefit; and
  - (2) that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate.

Directors must also ensure that the ASX is notified of the above interests in accordance with Listing Rule 3.19A. This Rule requires the Company, not the particular Director, to notify the ASX of the above interests.

Accordingly, the Company will enter into an agreement with each Director under which each Director will be obliged to provide the necessary information to the Company. An agreement of this nature recognises that much of the information required by the ASX, under section 205G, is held by each Director, by virtue of their position and role within the Company. By entering into a formal agreement, the Company ensures that each Director has been notified of their disclosure obligations under the *Corporations Act* and each Director authorises the Company to give the information provided by them to the ASX on their behalf and as their agent.

In particular, Listing Rule 3.19A provides that:

- (a) when a Director is appointed – the Company must notify the ASX of the above interests within 5 business days after the appointment (the appropriate form is ASX Appendix 3X). Accordingly, each Director must provide the following information as at the date of their appointment as a Director:
  - (1) details of all securities registered in their name, including the number and class of the securities;
  - (2) details of all securities not registered in the Director's name but in which he or she has a relevant interest within the meaning of Section 9 of the *Corporations Act*, including the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest; and
  - (3) details of all contracts to which the Director is a party or under which the Director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the

Company or a related body corporate, including the number and class of the shares, debentures or interests, the name of the registered holder if the shares, debentures or interests have been issued, and the nature of the Director's interest under the contract.

- (b) where a change in the above interests of a Director occurs – the Company must advise the ASX of the change in the Director's interests to the ASX no more than 5 business days after the change occurs (the appropriate form is ASX Appendix 3Y). Directors will need to provide to the Company on an on-going basis, as soon as reasonably possible after the date of the change and, in any event, no later than 3 business days after the date of the change:
- (1) details of changes in securities registered in the Director's name, including the following:
    - (A) the date of the change;
    - (B) the number and class of securities held before and after the change;
    - (C) the nature of the change (e.g., on-market, off-market);
    - (D) the consideration paid or received in connection with the change; and
    - (E) if an off-market transaction, the value of the securities that are the subject of the change;
  - (2) details of changes in securities not registered in the Director's name but in which he or she has a relevant interest within the meaning of Section 9 of the *Corporations Act*, including the following:
    - (A) the date of the change;
    - (B) the number and class of securities held before and after the change;
    - (C) the name of the registered holder before and after the change;
    - (D) the circumstances giving rise to the relevant interest;
    - (E) the nature of the change (e.g., on-market, off-market);
    - (F) the consideration paid or received in connection with the change; and
    - (G) if an off-market transaction, the value of the securities that are the subject of the change; and
  - (3) details of all changes to contracts to which the Director is a party or under which the Director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate, including the following:
    - (A) the date of the change;
    - (B) the number and class of the shares, debentures or interests to which the interest relates before and after the change;
    - (C) the name of the registered holder if the shares, debentures or interests have been issued; and
    - (D) the nature of the Director's interest under the contract; and

- (c) where a Director ceases to be a Director – the Company must notify the ASX of the interests of the Director at the time the Director ceases to be a Director, no more than 5 business days after the director ceases to be a Director (the appropriate form is ASX Appendix 3Z). Directors must supply to the Company as soon as reasonably possible after the date of ceasing to be a Director and, in any event no later than 3 business days after the date of ceasing to be a Director, the following information:
- (1) details of all securities registered in the Director's name, including the number and class of the securities;
  - (2) details of all securities not registered in the Director's name but in which he or she has a relevant interest within the meaning of Section 9 of the *Corporations Act*, including the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest; and
  - (3) details of all contracts to which the Director is a party or under which he or she is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate, including the number and class of the shares, debentures or interests, the name of the registered holder if the shares, debentures or interests have been issued, and the nature of the Director's interest under the contract.

Directors should also be aware of the substantial shareholder provisions contained in section 671B of the *Corporations Act* which require certain notices to be served on the Company and the ASX when a shareholder has a relevant interest in at least 5% of the issued shares in the Company and any changes of more than 1% to that relevant interest.