

SINGAPORE INSTITUTE OF DIRECTORS

STATEMENT OF GOOD PRACTICE

CONFLICTS OF INTEREST

1 Introduction

One of the key duties that directors owe to their companies is the duty to avoid conflicts of interest. The duty includes not placing oneself in a position where the directors' personal interests may *possibly conflict* with their duty to the company. In determining whether or not there is such conflict, one would have to consider the situation from the point of view of a reasonably informed and objective observer looking at the relevant facts and circumstances of the particular case to see whether there may be a real sensible possibility of conflict.

Conflicts may arise in several situations. Typical categories are:

- where directors have a direct or indirect material interest in transactions that the company enters into;
- where directors hold positions or offices or possess property that may result in conflicting duties; and
- where directors stand to benefit from information received by them or opportunities made available to them in their capacity as directors or officers.

Directors should exercise particular care in monitoring whether or not they or their fellow directors are placed in positions of actual or potential conflict. Where possible, conflicts and the appearance of conflicts should be avoided.

It is, however, recognised that conflicts are sometimes unavoidable due to the complex and multi-faceted business environment in which we now operate. In cases where such conflicts exist, directors must make appropriate disclosure of such conflicts and, where required by the law, obtain shareholders approval.

In dealing with conflicts of interest, directors should pay close attention to:

- provisions of the Companies Act (cap 50), and in particular, whether the situation falls within any specific provision of the Act prohibiting or prescribing procedures in relation to the relevant situation of conflict;
- the SGX Listing Manual; and
- the company's articles of association.

The paramount objectives of procedures to deal with conflicts should be the protection of the interest of the company and the promotion of transparency for the benefit of shareholders.

2 Procedure

- 2.1 Where directors are uncertain as to whether or not they are in a position of conflict, they should discuss the matter with the chairman of the board or the nominating committee. If necessary, professional advice should be sought.

Where there is still reasonable doubt after such consultation / advice, the matter should be treated as a conflict situation.

- 2.2 Where a conflict exists:

2.2.1 **Compliance with Companies Legislation:** Directors will have to ascertain the impact of the Companies Act and other relevant legislation on the situation. Certain specified conflict situations are prohibited (eg the granting of loans to director-related companies in contravention of Section 163) whereas others require compliance with specified procedural requirements (eg shareholders' approval for payments in respect of loss of office under Section 168).

2.2.2 **Compliance with the SGX Listing Manual:** Directors will have to determine whether the conflict situation falls within the situations contemplated by the SGX Listing Manual, in particular, Chapter 9.

2.2.3 **Disclosure of interests:** Directors should be familiar with their duty to disclose conflicts under Section 156 of the Companies Act and their articles of association. Section 156 requires directors to declare the nature of specified conflicts at a meeting of the directors of the company as soon as they are aware of circumstances giving rise to such conflict.

As a matter of best practice, directors should make arrangements with the company secretary for information relating to such conflict to be sent by circular to the rest of the board as soon as practicable. Formal disclosure of the conflict should then be made and minuted at the next board meeting.

General principles of company law require that disclosure of all director conflicts be made to the company's shareholders at a general meeting. Companies are, however, permitted to have articles which provide that this requirement be deemed to have been complied with so long as there has been compliance with disclosure requirements under Section 156 or disclosure to the Board.

In any event, it is necessary for listed companies to disclose in their annual reports particulars of material transactions between their CEOs, directors and controlling shareholders with the companies or their subsidiaries. In determining whether or not a particular transaction is material, directors should take into account the value and nature of the transaction and the impact that the transaction may have on the company. Where necessary, professional advice should be sought. If there is still doubt as to whether a particular transaction is material, it should be disclosed.

Where there is no such transaction, a negative statement to that effect must be included in the annual report.

2.2.4 **Right to be Notified of Meetings:** All directors, regardless of whether or not they are conflicted in relation to matters to be discussed at any particular meeting, must be given notice of directors' meetings.

2.2.5 **Presence at Meeting:** Whether or not a director is permitted to be present at a meeting at which matters in which he may be placed in conflict are discussed depends on the company's articles.

In the absence of any prohibition in the articles, directors are permitted to be present at the meeting when the subject matter to which the conflict relates ("the conflict-related matter") is discussed.

It is good practice for conflicted directors to excuse themselves when the conflicted-related matter is discussed unless the board is of the opinion that his presence and participation is necessary to enhance the efficacy of such discussion.

2.2.6 **Participation in Discussions:** In the absence of any articles on the matter, there is no rule of law prohibiting directors from participating in discussions on conflict-related matters where they are permitted to be present at the relevant meeting.

It is good practice for conflicted directors not to participate except:

- where he is invited by the board to do so;
- if the board consents, where he believes in good faith that the board has not considered all relevant matters for them to come to a decision on the conflict-related matter and the conflicted director is able to lawfully provide such information; and
- if the board consents, where he believes in good faith that the board will otherwise make an unsound decision.

Where such participation is permitted, it is good practice for the conflicted directors to excuse themselves for an appropriate period during the discussion so as to facilitate a full and frank discussion of the matter by the other directors.

2.2.7 **Voting:** Unless the company's articles prohibit voting on the part of the conflicted directors, they are permitted to vote on conflict-related matters.

(It should be noted that the SGX Listing Manual requires all companies to have articles that prohibit directors from voting in regard to any contract or proposed contracts in which the directors have, directly or indirectly, a personal material interest.)

It is good practice that conflicted directors refrain from voting on conflict-related matters even if there is no such prohibition.

Where possible, they should offer to excuse themselves from the meeting at the time when voting on the matter is to take place. It is open to the rest of the board to decline the offer unless the presence of the conflicted director is likely to adversely affect the voting process.

- 2.3 The degree to which a director may be affected by conflicts should be carefully considered in deciding:
- in the case of independent directors, whether or not the director may still be regarded as being independent; and
 - whether the conflicted director should be nominated for re-appointment onto the board having regard to (in addition to all other matters normally taken into account for re-appointments of directors) the extent and nature of his conflict.
- 2.4 Directors should consider resigning from office where they have a continuing material conflict of interest or where their conflict is likely to affect the effective on-going performance of their duties.

Directors should, however, understand that expertise and experience are not easily replaceable. They should therefore take every step to try to resolve the matter and should only resign as a last resort.

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