

STANDARD OPERATING PROCEDURE

ICAR Conflict of Interest Policy for Board Members

Doc number	06_GRP_0006
Author	Martin Burke
Date	11 th June 2019
Peer-reviewer	ICAR Board (to be done)
Latest review date	To be done

PURPOSE

The current SOP describes how ICAR handles potential conflicts of interest for Board Members.

SCOPE

Covers all ICAR, Service ICAR Board members plus Financial Inspectors.
Conflict of Interest Policy for Sub Committees Working Group and Task Forces see 06_GRP_0005

TERMS & DEFINITIONS

COI: Conflict of Interest
QAMS: Quality Assurance Management System
SOP: Standard Operating Procedure: established or prescribed method to be followed routinely for the performance of designated operations or in designated situations' (Merriam-Webster.com).
SC – sub-committee of ICAR
WG – working group of ICAR
TF – task force of ICAR
EG – expert group of ICAR
ToR – terms of reference
CE – ICAR Chief Executive

RESPONSIBILITIES

Chief Executive: author and gate keeper of process
President & Board: have obligations and duty to ICAR to declare any relevant interests

PROCEDURE / POLICY

RESPONSIBILITIES OF THE BOARD OF DIRECTORS

Every director owes fiduciary duties to ICAR. Since directors can be subject to personal liability for breaches of these duties, it is important that directors understand what is required.

Directors' fiduciary duties are regulated by:

- Legal statutes
- Judicial opinions
- ICAR Bylaws

Role of Directors in Management of ICAR

ICAR's board of directors is ultimately responsible for its management. The board discharges their responsibility by:

- appointing the chief executive officer to run the day-to-day operations of ICAR, propose strategies and objectives, and implement plans.
- supervising the chief executive officer.
- making major decisions for ICAR (for example, entering into a significant joint venture).

The directors are selected for their industry expertise and leadership and hold an advisory or supervisory role. The board is permitted to delegate almost any of its powers to a committee of directors. A duly appointed committee holds all powers delegated to it by the full board (or as otherwise provided for in the Bylaws).

Directors can reasonably rely on reports from committees, officers and other experts when making decisions for ICAR.

Core Fiduciary Duties

There are two core fiduciary duties:

1. The duty of care
2. The duty of loyalty

Directors owe these duties to ICAR. In addition to fiduciary duties owed under state law, directors may have many other duties stemming from ICAR policies and other self-governing documents (such as committee charters, as applicable).

Duty of Care

A director must employ the duty of care when making decisions or acting on behalf of ICAR. International, regional and local law requires a director to act with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

A director breaches their duty of care if he takes no action in a situation where a careful person would have acted. For example, if an organization commits fraud, a director can become personally liable for failing to stop the fraud if he failed to attend any meetings, monitor management in any way, or otherwise act.

Courts recognise that directors sometimes must take business risks to promote the best interests of the organization, and that judges are not in the best position to second guess business decisions made by the board of directors. Judges have been particularly careful not to impose liability for a decision that seems wrong only with the benefit of hindsight. To allow boards to take necessary business risks and to attract qualified people to serve as directors, state law has adopted the following:

- The business judgment rule. The business judgment rule presumes that directors comply with the duty of care.
- Analysis of process not substance. Courts focus on the process used in making the decision rather than the substance of the decision. Robust debate and discussion is important for big decisions.
- Indemnification. ICAR Bylaws provide that ICAR must indemnify directors against direct lawsuits if the director acts in good faith and in the best interests of ICAR and has no reasonable cause to believe that their behaviour was unlawful. ICAR may advance expenses if the director undertakes to repay such amounts if it is ultimately determined that he is not entitled to indemnification. Directors may also be entitled to indemnification from their employer depending on the policies and organizational documents of their employer.
- Insurance. ICAR insures directors and officers (D&O Insurance) to cover losses (such as settlement costs, fines and legal fees) resulting from a breach of the duty of care. Insurance to protect directors from fraud, dishonesty or for violations of criminal law cannot be purchased.

Business Judgment Rule

Courts are loathe to substitute their business judgment for the directors' or to question business decisions with the benefit of hindsight. For their reason, directors' actions are protected by the presumptions of the business judgment rule. The rule presumes that the board of directors acted on an informed basis and in the honest belief that the action was taken in the best interest of the organization. But to enjoy the protection of the business judgment rule directors must meet

the following three elements:

- **Informed.** The director must keep informed about ICAR and its decisions. Directors are required to participate in board actions. This means attending meetings (in person or by phone), carefully reading reports or other materials and asking questions. Directors can rely on information and opinions from consultants, management and employees, but need to make a good faith determination that those persons can competently produce the reports and make the analysis on which the board relies. Directors sometimes serve on multiple boards but must be careful not to spread themselves too thin or risk breaching the duty of care.
- **Good faith.** The directors must act in good faith. The decision-making process must be substantive and cannot just rubber-stamp management's actions.
- **Best interest of ICAR.** The directors must reasonably believe the action or transaction was made in the best interest of ICAR. A director who has a conflict of interest in the underlying action is not entitled to the presumptions of the business judgment rule.

Duty of Loyalty

The duty of loyalty requires directors to act in good faith for the benefit of ICAR (and not for their own interest). Decisions or transactions involving a conflict of interest are not protected by the business judgment rule. If the directors hold a personal interest in an action, a court will not presume they acted in the best interest of ICAR.

Under state law, a transaction involving a director with a conflict of interest is not voidable if one of the following conditions applies:

- The material facts of the conflict of interest are disclosed and the board of directors authorizes the transaction in good faith by a majority of the disinterested directors. Often a special committee of disinterested directors is convened for their purpose.
- The transaction is fair to ICAR at the time it is approved or ratified by the board of directors.

To avoid the need to *prove* a transaction is fair, a director should always disclose any conflict of interest and get the approval of the disinterested directors.

A conflict of interest can arise even when the director does not hold a personal interest in the transaction. For example, a director on ICAR board may represent an interested organization or industry group whose interests diverge from ICAR. Members of ICAR and industry participants hold (formally and informally) the right to elect a certain number of directors to represent their interests. Directors must remember that they owe a duty to ICAR as a whole, not just a certain group or organization.

Duty of Good Faith

Good faith is not a separate fiduciary duty, but is a component of the duty of care and the duty of

loyalty, as follows:

- Duty of care. A director must use good faith when exercising the duty of care. If a plaintiff can prove that the director acted in bad faith, then the presumptions of the business judgment rule will not protect the director from liability.
- Duty of loyalty. A director acting in bad faith does not act in the best interest of ICAR.

To act in good faith, a director must act with honesty of purpose and in the best interest of ICAR. No single definition or set of factors exists that defines good faith or bad faith, but the courts have identified several situations that usually involve bad faith. These include:

- An intentional failure to act in the face of a known duty to act, demonstrating a conscious disregard for one's duties. For example, a director knows management is violating ICAR policy, but makes no attempt to change the situation.
- A knowing violation of law. For example, if a director approves a hiring practice knowing it violates employment laws (but saves the organization money). Breaking the law for the interest of ICAR is not an excuse. For example, directors breach their fiduciary duties when they pay bribes to foreign officials even if it results in a large profit for the organization.
- If a director acts for any purpose other than advancing the best interests of ICAR.

Board Standards of Conduct

The following standards of conduct are common sense examples of how directors can comply with their responsibilities and fiduciary duties:

- Attend board meetings.
- Prepare for board meetings by reading materials ahead of time.
- Don't use judgmental statements.
- Talk about issues, not people. Don't interrupt.
- Don't criticize those who are absent.
- Don't monopolize the conversation.
- Avoid side conversations.
- Ask questions when you don't understand. There are no stupid questions.
- Keep confidential information confidential.
- Raise concerns in the boardroom, not privately afterwards.
- Refrain from asking special favours of staff.
- Recognize when you have a conflict of interest and disclose it to the board.

ICAR Conflict of Interest Policy

The policies set forth herein are applicable to all members of the Board of Directors and to all executive officers, which includes the Organization's Executive Director or Chief Executive Officer and other executive staff as determined by the Board.

Conflict of Interest Generally. A conflict of interest may arise whenever a Director or officer or a relative or business associate of same:

- i. has an existing or potential interest which impairs or might appear to impair their or her independent judgment in the discharge of responsibilities to the Organization; or
- ii. may receive a material benefit or non-material advantage which would not be obtained absent the relationship with the Organization. Potential conflicts may include, but are not limited to, the following examples:
 - 1) official relationship with banks, insurance carriers, contracted agencies, suppliers of goods or services with which the Organization does business;
 - 2) family relationships with employees of the Organization;
 - 3) accepting gifts, gratuities or favours of a substantial nature from a person or entity which does business or seeks to do business with the Organization;
 - 4) making use of confidential information obtained from the Organization for the benefit of the Director, relative or business associate;
 - 5) intimate personal relations between employees and officers or members of the Board of Directors of the Organization, when such relations are not incident to marriage or living together in a conjugal relationship; and
 - 6) a Director or committee member holds a financial interest in, or will receive any personal benefit from, a business firm furnishing services, materials or supplies to the Organization. Financial interest for their purpose shall mean any position as owner, officer, board member, partner, employee or other beneficiary.

Duty to Organization. Members of the Board of Directors and executive officers have a clear fiduciary obligation to the Organization in connection with their service in such capacities. At all times they shall act in a manner consistent with their fiduciary obligation and shall exercise particular care that no detriment to the interests of the Organization (or appearance of such detriment) may result from a conflict between those interests and any personal interests which the individual Director or executive officers may have.

Conflicts of Interest with Respect to Particular Transactions. If a Director or executive officer has knowledge of a possible conflict of interest with respect to any particular transaction, he or she shall promptly and fully disclose the potential conflict to the Board of Directors, either through the Chair or the Secretary of the Board in writing. The Director or executive officer shall recuse himself or herself from any and all deliberations and decisions in respect to the matter. The Board shall, by majority vote at a regular meeting, or special meeting, approve the transaction notwithstanding the potential conflict of interest, provided that the Board finds that the transaction is in the best interest of the Organization.

Absent

such approval, the President shall direct that the transaction not proceed, or that a transaction that is in process shall discontinue or terminate.

Disclosure of Potential Conflicts of Interest. Each member of the Board of Directors and each executive officer of the Organization shall file a Conflict of Interest Statement at each annual meeting. Their statement shall include any actual or potential conflicts of interest, which might be expected to occur within the coming year. The statement shall disclose, as fully as possible, the nature of the potential transactions, which may create conflicts of interest. Each Director and each executive officer shall agree

to answer any questions about potential conflicts that the Board may have. New Directors shall sign a Conflict of Interest Statement prior to joining the Board.

Violations of Conflict of Interest Policy. If the Board has reason to believe that a Director or executive officer has failed to disclose an actual or potential conflict of interest, it shall inform the person of the basis of such belief and afford the person an opportunity to explain the alleged failure to disclose. If, after hearing the response and making such further investigation as may be warranted, the Board determines that the person has failed to disclose an actual or potential conflict of interest, it shall take appropriate disciplinary and corrective action.

Confidentiality. All information concerning actual or potential conflicts of interest on the part of members of the Board of Directors or executive officers of the Organization shall be held in confidence, unless the best interests of the Organization dictate otherwise. Any disclosure beyond the members of the Board of Directors and the Executive Director or Chief Executive Officer shall take place only upon majority vote of the Board of Directors.

Draft for ICAR Board Review June 16th 2019

Conflict of Interest Policy Annual Affirmation of Compliance and Disclosure Statement

I have received and carefully read the Conflict of Interest Policy for board members and have considered not only the literal expression of the policy, but also its intent.

By signing their affirmation of compliance, I hereby affirm that I understand and agree to comply with the Conflict of Interest Policy.

I further understand that ICAR is a not for profit organization and that in order to maintain its tax exemption it must engage primarily in activities, which accomplish one or more of its tax-exempt purposes.

Except as otherwise indicated in the Disclosure Statement and attachments, if any, below, I hereby state that I do not, to the best of my knowledge, have any conflict of interest that may be seen as competing with the interests of ICAR, nor does any relative or business associate have such an actual or potential conflict of interest.

If any situation should arise in the future which I think may involve me in a conflict of interest, I will promptly and fully disclose the circumstances to the Chair of the Board of Directors of ICAR or to the Executive Director or Chief Executive Officer, as applicable.

I further certify that the information set forth in the Disclosure Statement and attachments, if any, is true and correct to the best of my knowledge, information and belief.

Name (Please print) _____

Signature

Date



Disclosure Statement:

Please complete the questionnaire, below, indicating any actual or potential conflicts of interest. If you answer "yes" to any of the questions, please provide a written description of the details of the specific action or transaction in the space allowed. Attach additional sheets as needed.

Financial Interests - A conflict may exist where an interested party, or a relative or business associate of an interested party, directly or indirectly benefits or profits as a result of a decision made or transaction entered into by the organization.

Please indicate, during the past 12 months:

Has the organization contracted to purchase or lease goods, services, or property from you, or from any of your relatives or business associates?

_____ No _____ Yes

If yes, please describe:

Has the organization purchased an ownership interest in or invested in a business entity owned by you, or owned by any of your relatives or business associates?

_____ No _____ Yes

If yes, please describe:

Has the organization offered employment to you, or to any of your relatives or business associates, other than a person who was already employed by the organization?

_____ No _____ Yes

If yes, please describe:

Have you, or have any of your relatives or business associates, been provided with a gift, gratuity or favor, of a substantial nature, from a person or entity which does business, or seeks to do business, with the organization?

_____ No _____ Yes

If yes, please describe:



Have you, or any of your relatives or business associates, been gratuitously provided use of the facilities, property, or services of the organization?

_____ No _____ Yes

If yes, please describe:

Other Interests - A conflict may also exist where an interested party, or a relative or business associate of an interested party, obtains a non-financial benefit or advantage that he/she would not have obtained absent their/her relationship with the organization, or where their/her duty or responsibility owed to the organization conflicts with a duty or responsibility owed to some other organization.

Please indicate if at any time during the past 12 months:

Did you obtain preferential treatment by the organization for yourself, or for any of your relatives or business associates?

_____ No _____ Yes

If yes, please describe:

Did you make use of confidential information obtained from the organization for your own benefit, or for the benefit of a relative, business associate, or other organization?

_____ No _____ Yes

If yes, please describe:

Did you take advantage of an opportunity, or enable a relative, business associate or other organization to take advantage of an opportunity, which you had reason to believe would be of interest to the organization?

_____ No _____ Yes

If yes, please describe:

Name (Please print) _____

Signature

Date