



CONFLICT OF INTEREST POLICY

Reviewed: May 2016 (including by Intelligent Risks Pty Ltd)

Board Approval: July 2016

Next review: 2018

1. PURPOSE

Actions and decisions taken at all levels within the Australian Himalayan Foundation (AHF) and its work need to be informed, objective and fair. The purpose of this Policy is to provide Board members, staff and volunteers access to information and a mechanism to disclose potential conflicts. It aims to: ensure the highest level of ethical conduct of persons employed by or involved in (AHF); and avoid perceptions and consequences detrimental to AHF that could arise from the real or perceived misuse of an individual's position or influence.

2. DEFINITIONS

Conflict of interest

Where there is a conflict between the individual interests of a Board member, staff member or volunteer, and their professional obligation to AHF such that it may provide, or be perceived to provide, advantage to the individual or to others who are associated with them, or such that an observer might reasonably question whether the professional actions or decisions were influenced by their own interests or are for their own benefit;

Or where an individual's position within AHF provides either personal benefit beyond the declared benefits arising from that position or an opportunity for undue influence in a decision relating to another person's benefit;

Or where there is conflict of interest arising within projects that has potential impact on the development principles of AHF.

Conflict of Duties

Where an individual, while occupying more than one position that involves the exercise of power or influence, affects outcomes in one position that are of direct and personal benefit to him/her as an occupant of another position.

Benefit

Means anything that provides a Board member, staff member or volunteer with a direct or indirect personal gain or the potential for personal gain or gain to a third party. Such a gain need not be financial, but could include provision of material or facilities, or provision of benefits.

3. POLICY PROCEDURES

3.1 Board of Directors

In accordance with Sections 191 and 192 of the Corporations Act 2001 (Refer [Annex A](#)) it is a Director's duty to notify other Directors of material personal interest when conflict arises. Directors with a potential conflict of interest must make full disclosure of:

- (i) the nature and extent of the interest; and
- (ii) the relation of the interest to the affairs of the AHF

This disclosure must be recorded in the Minutes of a Board meeting and recorded in the *Conflicts of Interest Register*. Any disclosure of potential conflict must be made before any decision is made or expected regarding the particular situation that raises concerns.

A Director who has an interest in a matter may give the other Directors standing notice of the nature and extent of the interest in the matter. This disclosure must be recorded in the Minutes of the Board meeting and recorded in the *Conflicts of Interest Register*. Any disclosure of potential conflict must be made before any decision is made or expected regarding the particular situation that raises concerns.

A Director may not be present during the deliberations of the Board in regard to any matter touching upon the subject matter of the conflict. Failure to comply with the provisions of the Corporations Act is an offence.

3.2 AHF Staff and Volunteers

Staff and volunteers with a conflict of interest must make disclosure of the situation and all relevant facts known to the CEO at the earliest possible opportunity. Staff needing to disclose conflict of interest should complete the *Conflict of Interest Disclosure Form (Annex B)* on employment. Any conflict will be recorded in the *Conflicts of Interest Register*. Breach of this Policy may result in disciplinary action and may ultimately jeopardise the staff member's employment or the volunteer's engagement with AHF.

3.3 AHF Projects

Within the project context, conflict of interest needs to be discussed and relevant measures taken to: reduce the incidence of pecuniary advantage to individuals or groups; increase transparency in procurement arrangements; and to prevent project benefits being unfairly apportioned.

Board members, staff, volunteers, consultants and visitors to AHF projects will record any gifts or benefits given by project partners with a monetary value in excess of AUD\$50 and be encouraged to decline gifts of any value given in anticipation of preferable treatment in the future, taking care to consider the cultural context in which the gift is offered and to avoid giving offence.

3.4 Confidentiality

Board members, staff and volunteers are bound by rules of discretion in regard to all matters of AHF business externally or internally. Further details are included in the *AHF Communications Policy*.

4. ROLES AND RESPONSIBILITIES

4.1 AHF Directors

All Directors are responsible for ensuring their own compliance with the Corporations Act 2001.

4.2 AHF Board and CEO

The Board and CEO will provide information and awareness of this Policy and associated Policies to staff and volunteers. The CEO will be alert to the possibility that the situations of

staff members and volunteers may change and may require disclosure of a potential conflict of interest.

4.3 AHF Staff and Volunteers

Individuals are responsible for their own compliance with this Policy. If the situation of a staff member or volunteer changes during their employment and they need to disclose a conflict of interest, they must complete the *Conflict of Interest Disclosure Form*.

Related Documents

AHF Constitution

AHF Board Manual

AHF Communications Policy

AHF Human Resources Procedures Manual

AHF Volunteers Policy

AHF Partnership Agreements

AHF Fraud and Anti-Corruption Policy

CONFLICT OF INTEREST PROCEDURES FOR AHF DIRECTORS

CORPORATIONS ACT 2001 - SECT 191

Material personal interest - Director's duty to disclose

Director's duty to notify other Directors of material personal interest when conflict arises.

(1) A Director of a company who has a material personal interest in a matter that relates to the affairs of the company must give the other Directors notice of the interest unless subsection (2) says otherwise.

(1A) For an offence based on subsection (1), strict liability applies to the circumstance, that the Director of a company has a material personal interest in a matter that relates to the affairs of the company. Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(2) The Director does not need to give notice of an interest under subsection (1) if:

(a) the interest:

(i) arises because the Director is a member of the company and is held in common with the other members of the company; or

(ii) arises in relation to the Director's remuneration as a Director of the company; or

(iii) relates to a contract the company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the company if it is not approved by the members; or

(iv) arises merely because the Director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the company; or

(v) arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity referred to in subparagraph (iv); or

(vi) relates to a contract that insures, or would insure, the Director against liabilities the Director incurs as an officer of the company (but only if the contract does not make the company or a related body corporate the insurer); or

(vii) relates to any payment by the company or a related body corporate in respect of an indemnity permitted under section 199A or any contract relating to such an indemnity; or

(viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the Director is a Director of the related body corporate; or

(b) the company is a proprietary company and the other Directors are aware of the nature and extent of the interest and its relation to the affairs of the company;

(c) all the following conditions are satisfied:

(i) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the company under subsection (1);

(ii) if a person who was not a Director of the company at the time when the notice under subsection (1) was given is appointed as a Director of the company--the notice is given to that person;

(iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or

(d) the Director has given a standing notice of the nature and extent of the interest under section 192 and the notice is still effective in relation to the interest. Note: Subparagraph (c)(ii) - the notice may be given to the person referred to in this subparagraph by someone other than the Director to whose interests it relates (for example, by the secretary).

(3) The notice required by subsection (1) must:

(a) give details of:

(i) the nature and extent of the interest; and

(ii) the relation of the interest to the affairs of the company; and

(b) be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter.

The details must be recorded in the minutes of the meeting.

Effect of contravention by Director

(4) A contravention of this section by a Director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

Section does not apply to single Director proprietary company

(5) This section does not apply to a proprietary company that has only 1 Director.

CORPORATIONS ACT 2001 - SECT 192

Director may give other Directors standing notice about an interest

Power to give notice

(1) A Director of a company who has an interest in a matter may give the other Directors standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The notice may be given at any time and whether or not the matter relates to the affairs of the company at the time the notice is given. Note: The standing notice may be given to the other Directors before the interest becomes a material personal interest.

(2) The notice under subsection (1) must:

(a) give details of the nature and extent of the interest; and

(b) be given:

(i) at a Directors' meeting (either orally or in writing); or

(ii) to the other Directors individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every Director.

Standing notice must be tabled at meeting if given to Directors individually

(3) If the standing notice is given to the other Directors individually in writing, it must be tabled at the next Directors' meeting after it is given.

Nature and extent of interest must be recorded in minutes

(4) The Director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

Dates of effect and expiry of standing notice

(5) The standing notice:

(a) takes effect as soon as it is given; and

(b) ceases to have effect if a person who was not a Director of the company at the time when the notice was given is appointed as a Director of the company.

A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph. Note: The notice may be given to the person referred to in paragraph (b) by someone other than the Director to whose interests it relates (for example, by the secretary).

Effect of material increase in nature or extent of interest

(6) The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

Effect of contravention by Director

(7) A contravention of this section by a Director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

**AHF CONFLICT OF INTEREST DISCLOSURE FORM
FOR AHF STAFF AND VOLUNTEERS**

I have read and agree to abide by the above *Conflict of Interest Policy*. To the best of my knowledge, I have no conflicts as described in this Policy, except those noted below or on the attached document. I also acknowledge my continuing obligation to notify the AHF of any conflict that may arise during my time as a staff member or volunteer.

Signature:

Date:

Please Print Name:

Note: if more space is required for a declaration please attach as a separate document.