

# ICC GUIDELINES ON CONFLICTS OF INTEREST IN ENTERPRISES

## GUIDELINES

Prepared by the ICC Commission on Corporate Responsibility and Anti-Corruption

### **Summary and highlights**

These Guidelines provide recommendations to Enterprises on how to monitor and manage Conflicts of Interest facing their directors, officers, employees, agents and representatives. By advising Enterprises on how to put in place a policy preventing Conflicts of Interest, ICC helps them deter corrupt practices and other illegal behaviour and promote an ethical business culture. These Guidelines also include four practical scenarios to illustrate the recommendations, as well as generic recommendations for preventing and mitigating Conflicts of Interest.



# ICC GUIDELINES ON CONFLICTS OF INTEREST IN ENTERPRISES

## Summary

### Mitigation of Conflicts of Interest

As a general rule, an Associate shall abstain or withdraw from debating, voting, or taking part in any decision-making processes or activities where a Conflict of Interest exists or might arise.

In particular, it can be decided to take the following actions when facing a Conflict of Interest:

- **Avoidance:** a Conflict of Interest or potential Conflict of Interest could be avoided, for example by giving up a role with a competing business or selling a shareholding in a supplier.
- **Disclosure:** if a Conflict of Interest is known to all parties involved through disclosure of it to them, this may allow the relationship to go ahead (for example, making it known that a Relative is applying for a job).
- **Stepping back:** it may be appropriate for someone subject of a Conflict of Interest not to become involved in a decision that may be affected by the Conflict of Interest. For example, where a Relative of an Associate applies for a job in the same Enterprise, arrangements could be made to ensure the Associate does not become involved in, or would not be in a position to influence any decision whether to hire the Relative or not.
- **Refusal:** rejecting the circumstance creating a Conflict of Interest will, in effect, eliminate the Conflict of Interest all together. This would e.g. be the case by refusing a personal gift.

Although compliance with the Policy is the responsibility of the Associate, the appropriate action to be taken after disclosure should be decided by the Line Manager and/or the Compliance Officer.

### Recommended Key Elements for a Written Policy

The following key elements should be included in a written Policy:

- Objective – first, the prevention of Conflicts of Interest, and if nevertheless they do arise, dealing with them, disclosing them and finally mitigating the risks of them arising;
- Scope – applicable and binding for all directors, officers, managers, employees, agents and representatives (Associates) of the Enterprise;
- Definitions – include clear definitions;
- Provisions:
  - comply with all applicable laws and regulations in addition to internal regulations of the Enterprise, including privacy laws and policies;
  - all decisions and actions by all Associates shall be taken in the best interest of the Enterprise;
  - Associates shall not take business opportunities that belong to the Enterprise for themselves;
  - Associates shall immediately disclose any Conflicts of Interest;

## ICC GUIDELINES ON CONFLICTS OF INTEREST IN ENTERPRISES

- Associates shall abstain or withdraw from debating, voting, or other decision-making processes or activities when a Conflict of Interest exists or might arise;
- Senior Management shall lead by example and give guidance on Conflicts of Interest;
- job applicants and newly hired or appointed Associates shall disclose any Conflicts of Interest immediately during the hiring or appointment process; and
- every member of Senior Management shall update his/her disclosure on Conflicts of Interest at least annually to the Compliance Officer, or any other person in charge of the Conflict of Interest Policy.
- provision on communication and training on Conflicts of Interest;
- provision explaining where guidance may be obtained in case of questions or concerns; and
- provision on regular reporting of Conflicts of Interest and evaluation of the Policy.

\* \* \*

## I. Introduction

In the current complex business world, Enterprises<sup>1</sup> and any of their Associates regularly face situations where interests are conflicting.<sup>2</sup> For the proper functioning of an Enterprise and any of its Associates it is important that such conflicts be resolved in an ethical and responsible way. In the private sector, Conflicts of Interest have been identified as a major cause behind recent corporate governance shortcomings. If Conflict of Interest situations are not properly identified and managed, they can seriously endanger the integrity of organisations and result in corruption in both the public sector and the private sector alike.<sup>3</sup> Unresolved direct or indirect<sup>4</sup> Conflicts of Interest are not acceptable in an Enterprise.

Article 7 of the ICC Rules on Combating Corruption<sup>5</sup> provides on Conflicts of Interest:

*“Conflicts of interest may arise when the private interests of an individual or of his/her close relatives, friends or business contacts diverge from those of the Enterprise or organisation to which the individual belongs.*

*These situations should be disclosed and, wherever possible, avoided because they can affect an individual’s judgment in the performance of his/her duties and responsibilities. Enterprises should closely monitor and regulate actual or potential conflicts of interest, or the appearance thereof, of their directors, officers, employees and agents and should not take advantage of conflicts of interest of others.*

*If their contemplated activity or employment relates directly to the functions held or supervised during their tenure, former public officials shall not be hired or engaged in any capacity before a reasonable period has elapsed after their leaving their office. Where applicable, restrictions imposed by national legislation shall be observed.”*

Although Enterprises in general are not subject to a legal obligation to prevent Conflicts of Interest, most jurisdictions have certain specific laws or regulations either prohibiting Conflicts of Interest or setting out principles on how to deal with them. However, those laws and regulations are quite often limited in scope and only apply to specific categories, sectors or professions, such as public officials, bankers, auditors and attorneys. It is not the intention in these Guidelines to deal with those specific rules, as these are not applicable to all Enterprises.

Conflicts of Interest may not be illegal *per se*. However, they may lead to Corrupt Practices e.g. where an individual grants, by exercising his/her decision-making power, an undue advantage to himself/herself, a Relative or the Enterprise with which he/she is associated. This means that if a Conflict of Interest is not dealt with properly, the Associate and Enterprise may be subject to investigation and prosecution with potentially serious legal, financial and reputational consequences. Put positively, preventing Conflicts of Interest can be viewed as preventing Corrupt Practices, fraud and other illegal behaviour, and can promote more generally an ethical business culture.

In addition, when an Associate has a private interest which diverges from the interest of the Enterprise, his/her capacity to act in the best interest of the Enterprise may be impaired, which may result in a breach of his/her duty of loyalty towards the Enterprise.

ICC therefore recommends that Enterprises closely monitor and regulate actual or potential Conflicts of Interest, or the appearance thereof, of their directors, officers, employees, agents and representatives and do not take advantage of Conflicts of Interest of others.<sup>6</sup>

<sup>1</sup> All words starting with a capital letter are defined in section II of these Guidelines

<sup>2</sup> It can even be argued that working for an Enterprise means dealing with conflicting interest, e.g. those of the Enterprise and those of the individual and his or her family. See “The Corporate Condition, The Dilemmas of dirty hands, many hands and entangled hands” by Muel Kaptein and Johan Wempe, 2002, p. 9.

<sup>3</sup> OECD Guidelines for Managing Conflict of Interest in the Public Service (2003), Executive Summary, p.13,

<sup>4</sup> An indirect Conflict of Interest occurs through intermediaries, such as agents and representatives. See also p.5, Definitions, Associates.

<sup>5</sup> ICC Rules on Combating Corruption (2011 edition)

It is also recommended that if their contemplated activity or employment relates directly to the functions held or supervised during their tenure/mandate, former public officials shall not be hired or engaged in any capacity before a reasonable period of time has lapsed after leaving their office. Where applicable, restrictions or specific rules imposed by national legislation shall be complied with.<sup>7</sup>

Based on an extensive exchange of good practices among its members, from many countries and from different sectors, and on a thorough benchmarking of their approaches, ICC wishes to issue these Guidelines, which take into consideration the most recent international, regional and national rules as well as commercial best practices and guidance as of the date hereof.

These Guidelines can be applied, *mutatis mutandis*, by all organisations, SMEs<sup>8</sup> or MNEs, for profit or non-profit alike. It aims as its target group both Compliance Officers and Associates.

In the subsequent sections, the following items will be dealt with:

**Section II: Definitions used in these Guidelines and Types of Conflicts of Interest**

- Subsection 1: Definitions used in these Guidelines
- Subsection 2: Explanatory Notes to a Conflict of Interest
- Subsection 3: Types of Conflicts of Interest with examples

**Section III: Guidance**

- Subsection 1: Communication and Training
- Subsection 2: Evaluation of the Policy
- Subsection 3: Content of the Policy
  - § 1: General
  - § 2: Prevention of Conflicts of Interest
  - § 3: Managing Conflicts of Interest
  - § 4: Mitigating Conflicts of Interest
- Subsection 4: Summary of recommended key elements for a written Policy

**Section IV: Scenarios**

- Subsection 1: General recommendations
- Subsection 2: Scenarios:
  - Scenario 1: Conflict of Interest or just minor support?
  - Scenario 2: Owning an interest in a supplier
  - Scenario 3: Saving the Enterprise for personal benefit
  - Scenario 4: An Enterprise and charity

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<sup>6</sup> For example by abusing confidential information obtained from an Associate of a potential customer in a tender process.

<sup>7</sup> See also United Nations Convention Against Corruption article 12, 2, (e)

<sup>8</sup> For a very practical brief guidance on how to avoid and mitigate Conflicts of Interest, see page 11- Mitigation of Conflicts of Interest

## II. Definitions used in these Guidelines<sup>9</sup> and Types of Conflicts of Interest

### Definitions used in these Guidelines

**Associates** are directors, officers, managers, employees, agents and representatives of an Enterprise.

**Bribery** is the offering, promising, giving, authorising or accepting of any undue pecuniary or other advantage to, by or for a public official at international, national or local level, a political party, party official or candidate to political office, or an Associate or for anyone else in order to obtain or retain a business or other improper advantage, e.g. in connection with public or private procurement contract awards, regulatory permits, taxation, customs, judicial and legislative proceedings.

**Compliance Officer** is the officer designated and made responsible for the Policy on Conflicts of Interest and its implementation.<sup>10</sup>

**Corruption** or **Corrupt Practice(s)** as used in these Guidelines shall include Bribery and trading in influence.

**Conflict of Interest** is a situation in which an Associate (or one of his/her Relatives) has a private<sup>11</sup> or personal interest, directly or indirectly, which (potentially) influences or appears to influence the objective exercise of his/her duties as an Associate to the detriment or benefit of the Enterprise.

**Enterprise** means any person or entity engaged in business and other economic activities, whether or not organised for profit, including any entity controlled by a state or territorial subdivision thereof; it includes a parent and its controlled subsidiaries.

**Guidelines** mean the present ICC Guidelines on Conflicts of Interest.

**Line Manager** is the Associate's manager responsible for the Associate's work from a business or operational perspective.<sup>12</sup>

**Policy** means Enterprise-wide effective principles, rules and procedures relating to Conflicts of Interest, including implementation practices and examples thereof.

**Relatives** include the Associate's family, such as his/her spouse or partner, children, parents, siblings, in-laws, grandparents and grandchildren, close friends and personal business partners.<sup>13</sup>

**Senior Management** means Associates with higher authority, appointed by the Enterprise, with specific duties and responsibilities under the Policy.

### Explanatory notes to a Conflict of Interest

Essentially, a Conflict of Interest is any situation where there is a risk that a private interest (political, business or commercial, etc.) of an Associate interferes or has the appearance of interfering with the legitimate interest of the Enterprise or entity for which that Associate works.<sup>14</sup> Conflicts of Interest can occur on all levels of governance and in all areas of human relationships.

There will also be a Conflict of Interest if the Associate or one of his/her Relatives breaches his/her loyalty towards a third party by influencing a business decision of that third party to the benefit of the Enterprise.

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<sup>9</sup> The definitions hereunder are based on those used in the ICC Rules on Combating Corruption (2011 edition)

<sup>10</sup> See p.8, 2<sup>nd</sup> paragraph. One might consider designating a specialist from the legal, compliance or human resources department or the ethics and compliance officer, if such a function exists.

<sup>11</sup> This includes in these Guidelines "personal" and "family" interest.

<sup>12</sup> In the case of the CEO (or a member of the executive board) the Line Manager will be the non-executive chairperson of the board.

<sup>13</sup> It may be considered to broaden the definition by also including nephews, nieces, aunts and uncles, as well as an Associate's neighbours and co-workers.

<sup>14</sup> Sometimes Conflicts of Interest are hidden through an intermediary so that it is hard to distinguish them.

## Types of Conflicts of Interest with examples<sup>15</sup>

In general the following types of Conflicts of Interest can be distinguished:

An **actual Conflict of Interest** is often considered to be situational in nature; the Associate faces a real and existing Conflict of Interest.

### Examples:

- Serving on the board of a company A whilst serving on the board of a competitor of company A;
- Hiring or supervising a Relative;
- Using assets of the Enterprise for private benefit<sup>16</sup>;
- An Associate of an Enterprise takes business opportunities, to which the Enterprise is entitled, for him/herself;
- Purchasing goods or services on behalf of the Enterprise from a supplier directly or indirectly owned by a Relative;
- Close personal relationships influencing the decisions in a bidding process;
- An Associate influences a business decision of a third party, where he/she has direct or indirect influence over a Relative, to the benefit of the Enterprise;
- An Associate trades in securities for his/her personal benefit or to the benefit of a Relative, while using non-public information relating to those securities.

A **potential Conflict of Interest** which does not exist yet, but may occur.

### Examples:

- An Associate is a board member of companies A and B which are not business related. This may create a Conflict of Interest in the event that the two companies anticipate doing business together;
- An Associate who works in the legal department of the Enterprise is a former public official of the competition authority of country X. This could create a Conflict of Interest if the Enterprise becomes subject to an investigation by the competition authority of country X;
- An Associate is the sibling of the CEO of the IT supplier of the Enterprise. This could become a Conflict of Interest if the Associate were to become responsible for the Enterprise's procurement process and were to contribute to that process/be part of the decision making process, as this situation could influence the objective fulfillment of the Associate's duties;
- An Associate of company A is a board member of an NGO. This could become a Conflict of Interest if the NGO were to file a complaint against company A for environmental damages;
- An Associate is in a position to influence a business decision of a third party where he/she has direct or indirect influence over a Relative to the benefit of the Enterprise.

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<sup>15</sup> For more examples see Section IV on Scenarios.

<sup>16</sup> This also constitutes misuse of assets of the Enterprise.



A **perceived Conflict of Interest** is a situation where an Associate appears to have a Conflict of Interest, even if this is not the case.

**Examples:**

- Company A hires a new employee who has the same name as the CEO, but they are not Relatives;
- An Associate is a senior director at company A and accepts a board membership at company B, with which company A does a lot of business. This may merely create a perceived Conflict of Interest, if the Associate is appointed board member with the full support and approval of the board of Company A and the situation is closely monitored.

The abovementioned types of Conflicts of Interest may overlap depending on the context of the conflict and its perception.

### III. Guidance

Enterprises are recommended to establish as part of their compliance programme a Policy relating to Conflicts of Interest which is adapted to their size, the nature of their business activities, locations where they operate, the complexity of their legal environment and their governance structure. This Policy should also address the use of agents and representatives to facilitate business for the Enterprise and provide guidance as to how to prevent potential Conflicts of Interest to the benefit of the Enterprise.

The Compliance Officer or another manager who is a specialist from the ethics and compliance department, the legal department or from the human resources department should be responsible for the Policy. He/she is in charge of the Policy's implementation, overseeing compliance with the Policy and answering any questions and providing guidance to Associates. He/she reports regularly on the implementation of and compliance with the Policy to the highest executive echelon of the Enterprise.

In addition, in order to ensure compliance with this Policy - and other policies - Enterprises are recommended to establish, within their organisation and as an integral part of their compliance programme, a robust whistleblowing system adapted to the size and resources of the Enterprise<sup>17</sup> and applicable regulations.

Enterprises should also ensure compliance with any applicable laws and regulations including those relating to data privacy and to the right to a private life of Associates, in addition to any applicable international instruments.<sup>18</sup>

#### Communication and Training

In order to create and enhance awareness and understanding of this Policy and on how to identify and solve a Conflict of Interest, Enterprises are recommended to frequently communicate with Associates on the Policy and the obligations stemming there from.

It is important that such communications are coming from or have at least the explicit support from Senior Management ("tone at the top").

In addition it is recommended that Senior Management, Line Managers and relevant support and other functions be trained on a regular basis on the contents of the Policy, the obligations set out, potential consequences of non-compliance and on how to identify and properly deal with a Conflict of Interest.

Senior Management and Line Managers shall communicate the Policy to their teams and are expected to report any Conflict of Interest which comes to their attention to the Compliance Officer.

Associates, who have questions about the Policy or Conflicts of Interest, may seek guidance from the Compliance Officer, their Line Manager or Senior Management.<sup>19</sup>

#### Evaluation of the Policy

Enterprises are recommended to regularly<sup>20</sup> evaluate the Policy, its implementation, compliance with it, its effectiveness and disclosures and to update it when necessary.

#### Content of the Policy

The Policy should cover the following:

<sup>17</sup> See ICC Guidelines on Whistleblowing (2008). Please note that some specific local laws and regulations (on privacy) may apply and limit the use of the whistleblowing system.

<sup>18</sup> See for instance: Data Protection, *European Commission*

<sup>19</sup> Consider whether to include in the Policy a reference to the Enterprise's whistleblowing system, if applicable.

<sup>20</sup> Preferably at least annually.

## **General**

The objective of the Policy should be to prevent Conflicts of Interest where possible and if not possible, to deal with them in an ethical and responsible way, to disclose them and to mitigate the risk of Conflicts of Interest.

The Policy should be applicable to and binding for all Associates of the Enterprise.

The Policy should provide that all Associates are expected to comply with the Policy on Conflicts of Interest and that breaches will not be tolerated and may lead to remedial and disciplinary actions including termination of employment.

## **Prevention of Conflicts of Interest**

While dealing with Conflicts of Interest, Associates must comply with all applicable laws, regulations and applicable international instruments in addition to internal regulations of the Enterprise.

All Associates' decisions and actions in the conduct of business shall be made in the Enterprise's best interest.

Associates shall not take business opportunities that belong to the Enterprise for their private benefit.

Associates are expected to comply with all requirements of their duties towards the Enterprise, and should not get involved in activities which could interfere with the performance of their duties. Membership of not-for-profit boards or similar community activities is accepted to the extent that those activities do not interfere with their positions within the Enterprise and should be disclosed as described below.

Associates shall avoid Conflicts of Interest whenever possible and if not, address as soon as possible, the substance, potential for and appearance of any Conflicts of Interest, so that the associated risks will be minimised for the Enterprise.

Job applicants and newly hired or appointed Associates are required to disclose any Conflict of Interest they may have immediately during the hiring or appointment process.

In addition to the above, Senior Management shall lead by example in dealing with Conflicts of Interest and shall be available to provide guidance to Associates on this Policy, the obligations set out below and on how to deal with Conflicts of Interest adequately.

An appropriate due diligence shall be performed when involving agents and representatives to facilitate business for the Enterprise, to ensure that potential Conflicts of Interest involving agents and representatives are identified and appropriate measures taken to manage and mitigate them.

## **Managing Conflicts of Interest**

Effective administrative and organisational processes and controls shall be installed and maintained with a view of taking all reasonable steps to prevent Conflicts of Interest, managing and mitigating them when avoidance is not possible. Information barriers or silos could also be put in place for example, to prevent unauthorised Associates from having access to confidential information.

If a Conflict of Interest arises or if an Associate believes that he/she may be involved in such a situation, the Associate shall promptly disclose it, preferably in writing to his/her Line Manager<sup>21</sup>. Agents and representatives should make such disclosures to a designated officer or the manager

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<sup>21</sup> Bigger Enterprises, such as MNEs, might choose to designate the Compliance Officer for receiving disclosures of Conflicts of Interests.

overseeing their activities. All Associates are requested to disclose any material changes to the information they disclosed to the Enterprise immediately to their Line Manager.<sup>22 23</sup>

Disclosure will amongst others include:

- Professional and service engagements, such as an officer function with or a membership of the board of another company or Enterprise;
- Received gifts and hospitality which do not comply with the Enterprise's policies;<sup>24</sup>
- A direct or indirect financial or non-financial interest in or other relationship with a supplier, customer, or competitor of the Enterprise either directly or through a Relative;
- A Relative's job application with the Enterprise where that position will involve reporting lines to an Associate, or when an Associate is involved in the decision-making process relating to the job application;
- A family relationship with a public official, which could lead to a Conflict of Interest or the perception thereof.

Every six months or at least annually, every member of Senior Management shall complete a letter of representation disclosing any activities, responsibilities, interests and relationships, which may interfere or have the appearance of interfering with the legitimate (political, business or commercial, etc.) interest of the Enterprise, together with information needed to properly evaluate the potential Conflicts of Interest. Whenever those activities, responsibilities, interests and relationships change materially, every member of Senior

Management shall immediately update the disclosed information in writing and submit it to the Compliance Officer or any other designated individual/body within the Enterprise<sup>25</sup>.

The Line Manager, the Compliance Officer, the designated officer or manager overseeing the activities of an agent or representative is responsible for managing a disclosed Conflict of Interest.

This means:

- Treating the information disclosed by an Associate confidentially and without bias;
- Fairly evaluating the disclosed Conflict of Interest, taking into account business and reputational risks for the Enterprise;
- If needed, seeking guidance from the Compliance Officer;<sup>26</sup>
- Making a decision which could resolve the Conflict of Interest whilst minimising the risks for the Enterprise and protecting the private interest of the Associate to the extent possible<sup>27</sup>. In this respect, the Line Manager should consider what the perception may be of the Conflict of Interest by others within the Enterprise and outside.

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<sup>22</sup> In order to avoid that Associates undertake conflicting commitments, which may interfere with their job's duties, or create a Conflict of Interest, Enterprises are recommended to include as far as possible under the applicable laws a non-competition clause in the (employment) contracts of all Associates.

<sup>23</sup> Agents and representatives should make such disclosures to a designated officer or the manager overseeing their activities.

<sup>24</sup> See ICC Guidelines on Gifts and Hospitality (2014)

<sup>25</sup> It is important to monitor Conflicts of Interest of Senior Management on a regular basis. The described procedure is quite common in MNEs, but other procedures may be used depending on the circumstances and size and character of the Enterprise. It is recommended to make the Compliance Officer or an ethics committee responsible for this process.

<sup>26</sup> If the Compliance Officer is the responsible Associate in charge of the Policy – see footnote 21 - the Compliance Officer could seek assistance from other specialised support functions, such as legal or human resources.

<sup>27</sup> Bigger Enterprises, such as MNEs

may choose to leave this responsibility to a special ethics or ad hoc committee, consisting of specialists.

- Communicating his/her decision and the underlying grounds of such decision to the Associate and making sure that the Associate understands and complies with the decision; and
- Fully documenting the abovementioned steps, which should be included in the personnel file of the Associate and a copy sent to the Compliance Officer.<sup>28</sup>

### Mitigation of Conflicts of Interest

As a general rule, an Associate shall abstain or withdraw from debating, voting, or taking part in any decision-making processes or activities where a Conflict of Interest exists or might arise.

In particular, it can be decided to take the following actions when facing a Conflict of Interest:

- **Avoidance:** a Conflict of Interest or potential Conflict of Interest could be avoided, for example by giving up a role with a competing business or selling a shareholding in a supplier.
- **Disclosure:** if a Conflict of Interest is known to all parties involved through disclosure of it to them, this may allow the relationship to go ahead (for example, making it known that a Relative is applying for a job).
- **Stepping back:** it may be appropriate for someone subject of a Conflict of Interest not to become involved in a decision that may be affected by the Conflict of Interest. For example, where a Relative of an Associate applies for a job in the same Enterprise, arrangements could be made to ensure the Associate does not become involved in, or would not be in a position to influence any decision whether to hire the Relative or not.
- **Refusal:** rejecting the circumstance creating a Conflict of Interest will, in effect, eliminate the Conflict of Interest all together. This would e.g. be the case by refusing a personal gift.<sup>29</sup>

Although compliance with the Policy is the responsibility of the Associate, the appropriate action to be taken after disclosure should be decided by the Line Manager and/or the Compliance Officer.

### Summary of Recommended Key Elements for a Written Policy

In addition to the recommendations in this section on Guidance, the following key elements should be included in a written Policy:

- Objective – first, the prevention of Conflicts of Interest, and if nevertheless they do arise, dealing with them, disclosing them and finally mitigating the risks of them arising;
- Scope – applicable and binding for all directors, officers, managers, employees, agents and representatives (Associates) of the Enterprise;
- Definitions – include clear definitions (see section II);
- Provisions:
  - comply with all applicable laws and regulations in addition to internal regulations of the Enterprise, including privacy laws and policies;
  - all decisions and actions by all Associates shall be taken in the best interest of the Enterprise;
  - Associates shall not take business opportunities that belong to the Enterprise for themselves;
  - Associates shall immediately disclose any Conflicts of Interest;

<sup>28</sup> If the Compliance Officer is in charge of the Policy.

<sup>29</sup> See ICC Guidelines on Gifts and Hospitality (2014), *op. cit.*

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- Senior Management shall lead by example and give guidance on Conflicts of Interest;
- Job applicants and newly hired or appointed Associates shall disclose any Conflicts of Interest immediately during the hiring or appointment process; and
- Every member of Senior Management shall complete a letter of representation on Conflicts of Interest every six months or at least annually and submit it to the Compliance Officer, or any other person in charge of the Conflict of Interest Policy.
- Provision on communication and training on Conflicts of Interest;
- Provision explaining where guidance may be obtained in case of questions or concerns; and
- Provision on regular reporting on Conflicts of Interest and evaluation of the Policy.

## **IV. Scenarios**

### **General Recommendations**

This section deals with four scenarios illustrating a Conflict of Interest situation.

Most of these scenarios call for common measures to prevent and/or mitigate a Conflict of Interest situation. While those measures are partially repeated in the individual scenarios, the following two subsections provide an overview of the most common measures to prevent and/or mitigate Conflicts of Interest. Reference is also made to section III above.

### **Common measures to prevent Conflicts of Interest**

- Introduce a clear Policy on Conflicts of Interest and implement an obligation for Associates to promptly disclose a Conflict of Interest to their Line Manager or Compliance Officer, as soon as such a situation occurs.
- Clear internal communication and training on Conflicts of Interest.
- Strong tone at the top on ethical values and compliance.
- Communication that any misconduct or non-compliance may lead to disciplinary actions.

### **Common measures to mitigate Conflicts of Interest**

- If no Policy on Conflicts of Interest has been implemented in the Enterprise yet, adopt one as set out in the prevention measures section above.
- Start a clear internal communication and training on Conflicts of Interest and anti-corruption as soon as possible.

## **Scenario 1 - Conflict of Interest or just minor support?**

### **Description**

A financial institution (the Enterprise) operates in Fictivia.

After many efforts one of the Enterprise's sales representatives has succeeded in convincing an investment fund of which the main shareholder is the local government, to close a deal with the Enterprise. The deal would be very beneficial to the Enterprise and the bonus of the sales representative depends on completion of the deal.

During negotiations, at lunch, the Enterprise's point of contact at the investment fund informs the Enterprise that the son of the board member representing the interests of the government in the investment fund has recently graduated. He adds that the son is looking for a paid traineeship and that working for a financial institution would be considered a great first work experience.

The board of the investment fund is to make the final decision on the deal next week.

### **How to prevent this type of Conflict of Interest?**

- Clear internal communication and training on Conflicts of interest and anti-corruption. Indeed, although such a situation would be a clear example of a Conflict of Interest, it may also entail Corruption risks.
- The Enterprise should implement clear, fair, objective and transparent recruitment processes. Specific rules relating to the recruitment of relatives or business partners of public officials should be implemented.
- Discuss business ethics culture of the Enterprise prior and during negotiations with third parties like the investment fund in order to discourage this type of request.

### **How to mitigate this type of Conflict of Interest?**

- The sales representative should immediately disclose the situation to the Compliance Officer or to any other person in charge of the Conflict of Interest Policy, informing the latter that this situation could result in a Conflict of Interest and could be perceived as an attempt to influence the decision-making of the investment fund, and be seen as a Corrupt Practice.
- In addition, it should be kept in mind that the Line Manager may share the same interest as the sales representative and hence may not be in a position to make the appropriate decision. Therefore, the sole approval of the Line Manager should not be sufficient to accept such hiring.
- Bearing in mind that hiring the son of a board member of the investment fund which considers a deal with the Enterprise, may be perceived as a Conflict of Interest and even a Corrupt Practice, the first question to be decided upon by the Compliance Officer, the responsible board member of the Enterprise and the human resources department, is whether, given those circumstances, the son may be eligible for the traineeship at all.
- In order to avoid any preferential treatment the resume of the son of the board



member should be transmitted to the human resources department and go through the regular human resources procedures in order to test the individual's qualifications, competence and expertise for holding the position in question.

- The sales representative should not interfere in the human resources process.
- Avoid offering a position to the son in which he would be supervised by the sales representative.
- Avoid offering a position to the son, in which he would be involved in the deal either directly or indirectly.

## ***Scenario 2 - Owning an interest in a Supplier***

### **Description**

Enterprise A seeks to renew its IT infrastructure which would involve substantial investments.

One of the senior managers, X, of the IT Department is married to the owner of a potential supplier (the Supplier) which could supply the products and the services Enterprise A is looking for.

### **How to prevent this type of Conflict of Interest?**

- Implement an obligation to disclose any existing or potential Conflict of Interest for newly hired employees and require them to renew such disclosure if the situation changes.
- Adopt transparent procurement procedures and monitor that they are effectively implemented and complied with.

### **How to mitigate this type of Conflict of Interest?**

- The senior manager X should immediately disclose the situation to the Compliance Officer or to any other person in charge of the Conflict of Interest Policy, as this situation may result in a Conflict of Interest and could be perceived as an attempt to influence the decision-making of Enterprise A and be considered a Corrupt Practice.
- Do not involve the IT senior manager in the decision-making process so that he/she is not in a position to influence the selection process.
- Follow the applicable procurement procedures and monitor compliance therewith.
- If the Supplier is selected, the IT senior manager should not be involved, in whatever role, in the delivery process of the IT products and services and their implementation.

***Scenario 3 - Bringing down the Enterprise for personal benefit instead of saving it?***

**Description**

The Enterprise is in extreme turmoil and the CEO has had to step down due to strong pressure from activist shareholders. An interim CEO from outside the Enterprise has been appointed to solve the issues and improve the performance of the Enterprise.

The interim CEO has a strong background in the industry the Enterprise is operating in. However, it was subsequently learned that he also holds a substantial interest in a competitor of the Enterprise. This may create the risk of the interim CEO sharing sensitive information about the Enterprise with the competitor, causing the enterprise in turmoil to incur even more losses.

**How to prevent this type of Conflict of Interest?**

- Introduce and implement a procedure for the recruitment of Associates, which requires background checks, clauses on confidentiality and, as far as possible under applicable law, non-competition in the contracts.
- Ensure that a thorough background check is actually performed on the candidate interim CEO.
- Ensure that the employment contract of the candidate interim CEO includes the appropriate clauses on any potential Conflicts of Interest, compliant with the laws and regulations as well as with the Enterprise's policies and requiring the candidate interim CEO to comply with such laws, regulations as well as the Enterprise's policies.
- Introduce proper controls and governance rules requiring under all circumstances two signatures when the Enterprise is represented.
- Ensure that the interim CEO will comply with the double signature requirement and will not be authorised to represent (and sign on behalf of) the Enterprise on his/her own.

**How to mitigate this type of Conflict of Interest?**

- The interim CEO should immediately disclose his/her interest to his/her Line Manager, who will be in this case, the chairperson of the board or supervisory board. The latter should deal with the situation promptly.
- If this substantial interest is discovered in another way (i.e. not by voluntary disclosure from the interim CEO), the chairperson of the board or supervisory board, acting as his/her Line Manager, should immediately deal with the situation and consider taking disciplinary measures.
- The contract between the Enterprise and the interim CEO and applicable policies

should be carefully reviewed in order to establish whether the interim CEO is allowed to have a substantial interest in a competitor of the Enterprise.

- If this is not allowed under the contract or applicable policies of the Enterprise, the interim CEO should be given the choice between divesting the interest in the competitor or immediate resignation or termination as interim CEO.
- If the contract clauses and the policy do not prohibit the interim CEO from having a substantial interest in a competitor of the Enterprise, and if no Policy on Conflicts of Interest has been implemented, consider adopting one as soon as possible.
- If a double signature policy has not been implemented yet, refer to the prevention measure set out above and ensure that the interim CEO will not be in a position to represent the Enterprise on his/her own.

## **Scenario 4 - An Enterprise and a Charity**

### **Description**

Enterprise X provides logistics services to retail stores. As part of its corporate responsibility policy, its Associates are accepted to take part in not-for-profit activities.

One of the senior in-house lawyers of Enterprise X, Mr Y, is chairperson of a not-for-profit organisation promoting animal welfare (Happy Animal). That organisation is planning to launch a media campaign promoting organic treatment of poultry. The campaign will also target some supermarkets claiming that they sell poultry which are mistreated.

One of these supermarkets is a new major customer of Enterprise X for logistics services. The representative and spokesperson in the media campaign for Happy Animal will be Mr. Y.

### **How to prevent this type of Conflict of Interest?**

- Introduce a clear Policy on Conflicts of Interest, which includes provisions on (potentially) conflicting activities.
- Clear internal communication and training on Conflicts of Interest, in particular for Associates, who engage in not-for profit activities, which may potentially conflict with the interest of the Enterprise.
- Introduce specific clauses in all employment contracts relating to external activities which may interfere with the duties of the Associate or the interests of the Enterprise.

### **How to mitigate this type of Conflict of Interest?**

- Mr Y should immediately disclose the Conflict of Interest to his Line Manager or the Compliance Officer.
- Mr Y should step back from his role as spokesman in the planned campaign of Happy Animal and should consider resigning as chairman of Happy Animal.
- Mr. Y should not be involved in any way whatsoever in the relationship with the supermarket.
- If the Conflict of Interest is discovered in another way (i.e. not voluntarily disclosed by Mr Y) and in the context of the new contract with the supermarket, his Line Manager should immediately take action and order Mr Y to step back from his role as spokesman for Happy Animal in the planned campaign and consider taking any disciplinary measure.
- If there is neither Conflict of Interest Policy in place nor any supporting HR policy or employment contract, those should be implemented as soon as possible (refer to the prevention measure section above).
- Enterprise X should consider disclosing this potential Conflict of Interest to the supermarket together with a description of the remedial actions taken.



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