

Directors' Conflicts of Interest

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1. Policy Objectives

- 1.1 The objective of this Policy is to assist the Directors to fulfil their legal duties in relation to conflicts of interest and duty through identifying and avoiding actual conflicts of interest and the perception, whether founded or not, of a conflict of interest.

2. Key 'Conflict of Interest' Legal Concepts

- 2.1 In setting this policy, the Board recognises:

- (i) The director's duty implied by law, which is generally referred to as the '**duty to avoid conflicts of interest**' but which, in spite of this description, encompasses both:
 - (A) the duty to avoid **conflicts of duty and duty** (obliging a Director of Blue Energy to avoid conflicts between duties they owe as a Director to Blue Energy and any legal duty they owe to another company of which they are also a director and/or an executive) which might arise in relation to decisions of the Board of Blue Energy; and
 - (B) the duty to avoid **conflicts of duty and interest** (obliging a Director of Blue Energy to avoid conflicts between duties they owe as a Director to Blue Energy and any financial or other interest they have whether through an employer company or a personal investment) which might arise in relation to decisions of the Board of Blue Energy;
- (ii) The provisions of Sections 191 and 195 of the Corporations Act, 2001 which applies to Blue Energy as a public company, requiring, in summary:
 - (A) ongoing disclosure of all '**material personal interests**' which any Director of Blue Energy has in any decision of the Board of Blue Energy;
 - (B) that the Director having such an interest absents themselves from the discussion and the decision in relation to any decision of the Board in which the Director has a material personal interest, unless agreed otherwise by the Directors having no such material personal interest;
- (iii) The provisions of clause 6.6 of the Constitution of Blue Energy which reflect the requirements of Sections 191 and 195 of the Corporations Act, 2001;
- (iv) The provisions of Chapter 2E of the Corporations Act, 2001 relating to the giving of financial benefits to related parties which apply in the limited circumstances of the giving of financial benefits to Directors or to entities effectively controlled by them.

3. What is a 'Conflict of Interest' for Blue Energy Directors?

3.1 In this Policy, a reference to a conflict of interest is a reference to any conflict of interest which arises, or may reasonably be expected to arise, between a Blue Energy Director's:

- (i) obligations to serve absolutely the interests of Blue Energy; and
- (ii) any other separate personal, professional, business or other interests or duties of that Director.

3.2 To avoid doubt, a material personal interest which a Director has in any decision of the Board of Blue Energy is deemed to be a conflict of interest for the purposes of this Policy. A 'material personal interest', whilst not definitive at law, is considered by the Board to be any interest which a Director has in a decision of the Board of Blue Energy, whether or not that is a financial interest, which might reasonably be expected to have a not insubstantial influence on a decision by the Director.

3.3 It is not possible to set out a definitive list of circumstances that would amount to a 'conflict of interest'. However, as a general guide, wherever another duty which a Blue Energy Director owes to another person or company might reasonably be expected to interfere with the exercise by that Director of independent judgment in relation to a specific decision or decisions of the Blue Energy Board then this would be regarded as a conflict of interest for the purposes of this Policy.

3.4 Using the above guidance, the Board has identified the following scenarios as being circumstances in which the relevant Blue Energy Director in each scenario would be regarded by the Board of Blue Energy as having a conflict of interest (or at least a real prospect of a conflict of interest), thus requiring disclosure and management in accordance with the remainder of this Policy:

- (i) **Scenario #1:** A decision of the Board of Blue Energy, or any committee or other delegate of the Blue Energy Board, relating to a public or private tender for mining or other interests in respect of which the relevant Blue Energy Director is also interested as a competing bidder or member of a consortium which is a competing bidder.
- (ii) **Scenario #2:** Receipt by the relevant Blue Energy Director of gifts, gratuities and entertainment from a company or person that has, or may reasonably be considered to have, an interest in the outcome of a decision of the Blue Energy Board.

4. Conflict of Interest Management Policy

4.1 Each Director of Blue Energy is responsible to keep the Board fully informed of all conflicts of interest relating to the Director, having regard to the provisions of Section 3 of this Policy in determining what comprises a conflict of interest.

4.2 A Director who advises the Board of an actual conflict of interest relating to the Director, shall advise the Board of the steps which the Director proposes to take to manage the conflict of interest.

- 4.3 In the event that a Director (the first Director) in good faith requests another Director (the second Director) to advise the Board whether a conflict of interest exists for the second Director in relation to a specific set of circumstances identified by the first Director, the second Director will provide to the Board a full account of the second Director's response to the first Director's request.
- 4.4 In either case, whether a disclosure made by a Director under paragraph 4.2 or under 4.3 above, the Board, excluding the disclosing Director, will resolve whether they are satisfied with the extent of the disclosure and/or explanation of the Director and may also resolve any other steps which are to be taken to protect the interests of Blue Energy in respect of the Director's disclosure and/or explanation.
- 4.5 If the Board, excluding the disclosing Director, resolves that the protection of the interests of Blue Energy demand that specific information should be withheld from the disclosing Director due to a real prospect that a conflicting duty for that Director might reasonably require the Director to disclose such information to another company or person, then for so long as such prospect exists, Blue Energy may withhold all such identified information from that Director.
- 4.6 If, between meetings of the Board, it is determined by the Chairman in consultation with the CEO that a Director of Blue Energy has a real prospect of a conflict of interest in respect of a particular matter for decision by the Board, the Chairman may take such steps as they consider appropriate, prior to the next scheduled meeting of the Board, to advise the relevant Director of their concern and/or to withhold relevant information from that Director until the next meeting of the Board at which the Chairman will request that the Board consider the matter and make a resolution in accordance with paragraphs 4.4 and/or 4.5 above. In the event that the potentially conflicted Director is the Chairman, then this authority will fall to the Chair of the Audit Committee of the Board acting in consultation with the Chairman.
- 4.7 A disclosing Director will be entitled at the cost of Blue Energy to obtain legal advice in respect of the Director's legal position relating to a decision of the Board contemplated by paragraphs 4.4, 4.5 or 4.6 above, provided that the Director:
- (i) advises the Board in advance of his or her intention to obtain legal advice;
 - (ii) expressly undertakes that such legal advice will be strictly limited in its scope to:
 - (A) the legal consequences for the Director; and
 - (B) the options open to the Director,
- in respect of the Board's relevant decision or decisions; and
- (iii) provides the Board with a full copy of all such legal advices and a full copy of the invoice or invoices relating to the legal advice or advices.

5. Conflict of Interest Management Procedures

Ongoing Director Declarations

5.1 Each Director will, upon appointment, be provided with a copy of this Policy, and will be required to sign a confirmation of, amongst other things, the Director's commitment to adhere to the spirit as well as the letter of this policy and that the Director has advised his or her employer in writing of the obligations of the Director under this Policy.

Directors' Interests Register

5.2 A Directors' Interests Register must be established and maintained by the Secretariat and must be open for inspection by any member of Board but any personal information it contains must be treated as highly confidential and must not be disclosed except to the extent necessary to implement this Policy.

5.3 Each Director must:

- (i) promptly after being appointed to the Board;
- (ii) at least annually thereafter; and
- (iii) at any time during their term of office that a new relevant material interest or relationship arises,

complete a Directors' Interests Declaration, in the form **attached**, and give it to the Company Secretary notifying all relevant material interests and relationships of the Director which give rise to an actual conflict of interest or might be expected to give rise to a conflict of interest (i.e. a potential conflict of interest) (see Section 3 above for guidance as to what comprises a conflict of interest).

5.4 The Company Secretary will be responsible to ensure that the details of all such declarations are entered in the Directors' Interests Register.

5.5 Each Director has an ongoing obligation during their term of office to notify the Company Secretary of relevant conflicts of interest or relationships as they arise that the Director becomes aware may reasonably be expected to be, or result in, a conflict of interest (see item 2.1 above for guidance).

5.6 The Company Secretary is responsible to keep the Board, through the Chairman, informed of all notifications made under this Policy.

Declarations at Meetings

5.7 There shall be a standing item on the agenda for each meeting of the Board, requiring Directors to declare conflicts of interest as contemplated by this Policy.

5.8 Each Director must identify when they have a conflict of interest with regard to any item on the agenda for a meeting or arising in the course of the meeting.

5.9 Each Director who:

- (a) has declared a conflict of interest; or

- (b) is determined by a majority resolution of the other Directors to have a conflict of interest,

must, unless agreed otherwise by the other members of the Board, leave the meeting for the duration of the discussion or refrain from taking part in the debate on the relevant issues. In any event, the Director must abstain from voting on such items.

- 5.10 All such declarations of conflicts of interest must be recorded in the minutes of the relevant meeting. For the avoidance of doubt, in the case of minor or potential conflicts of interest, the minutes need only record the fact of the conflict having been declared.
- 5.11 If a Director has been absent from the room for the discussion of a particular item, that Director shall not, unless the other members of the Board resolve otherwise, receive that portion of the minutes relating to the discussion held in absence of the Director.
- 5.12 Documents relating to matters in which a Director has disclosed a conflict of interest will only be withheld from that Director strictly in accordance with any relevant decisions of the Chairman or resolutions of the Board taken in accordance with paragraphs 4.4, 4.5 or 4.6 of this Policy.

6. Conflicts of Interest Procedure

- 6.1 Where a specific matter is on the agenda of a Board meeting, which matter involves a potential conflict of interest, the Director affected shall orally disclose the conflict and may be required by the Board to disclose it in writing. The disclosure shall contain the following:
- (a) Details of the interest thought to be conflicting;
 - (b) Details of any information or other advantage obtained or obtainable by the Director in that capacity in respect of the relevant matter;
 - (c) Details of what action, if any, the Director has taken or intends to take, in his or her private capacity in respect of the conflict of interest;
 - (d) Any other details relevant to the matter to enable the Board to make an informed decision on the Director's position.
- 6.2 The oral or written disclosure should be incorporated in the minutes of the meeting. The Director should then withdraw from the meeting room while the matter is discussed, and the minutes should be noted accordingly.
- 6.3 A Director who has disclosed a conflict of interest may, with the permission of the Board, address the Board or ask or answer any questions in relation to the matter. The Director must immediately withdraw from the meeting room after addressing the Board or asking or answering questions.

- 6.4 Where a specific matter is on the agenda of a Board meeting and the matter involves a potential interest (but not a conflict of interest), the Director affected shall disclose the interest orally. The disclosure must provide full and accurate details and will be incorporated in the minutes of the meeting. The Director may remain in the meeting to fully participate in the discussions and voting.
- 6.5 Those Directors who are unaffected by a conflict of interest (assuming they constitute a quorum) should consider whether there is a conflict of interest, and if so, whether to approve the transaction or the Director's position, which approval may be conditional. Unless the conflict is so significant that it is thought inappropriate to give approval, it would be expected that approval would be given in most cases. The Directors should satisfy themselves that the transaction is appropriate. The minutes should record whether or not the Directors have satisfied themselves that the transaction or Director's position is appropriate.
- 6.6 A decision by the Board that there is no conflict of interest or that there is a conflict of interest, but that the transaction or the Director's position is approved, should be recorded in the Board minutes.
- 6.7 Where the Board decides that the transaction or the position of the Director should not be approved or decides that it should be approved subject to conditions that are acceptable to the affected Director, the Board should state its reasons which should be recorded in the minutes. Any decision on that agenda item should then be deferred unless the deferral is detrimental to the commercial interests of the Company. In these circumstances, the CEO or Company Secretary should normally refer the matter to its legal advisers for advice.
- 6.8 If thought in the interests of the Company, the part of the minutes detailing the discussions and resolutions of the Board that have taken place in the absence of a conflicted Director may be withheld from the conflicted Director.
- 6.9 The Board will record all declarations of interest, including verbal declarations, in the minutes of meetings and a Directors' register of interests.
- 6.10 The Directors register of interest in which all Directors declarations are recorded will be maintained by the Company Secretary.

7. Policy & Procedure Review

- 7.1 This policy will be reviewed and, if appropriate, updated by the Board every 3 years.