



# COUNCILLOR CODE OF CONDUCT

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## Councillor's Code of Conduct

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### 1.1 Core Principles

Councillors and officers, of the Institute (the Company):

- a. Must act honestly, in good faith and in the best interest of the Company as a whole.
- b. Have a duty to use due care and diligence in fulfilling the functions of office and exercising the powers attached to their particular office.
- c. Must use the powers of office or employment for a proper purpose, in the best interests of the Company as a whole.
- d. Councillors have a specific obligation to be independent in judgment and actions and to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Council.
- e. Must recognise that the primary responsibility is to the Company's Members as a whole but should, where appropriate, have regard for the interests of all stakeholders of the Company.
- f. Agree that the Confidential information received in the course of the exercise of their duties remains the property of the Company and it is improper to disclose it, or allow it to be disclosed, unless that disclosure has been authorised by the Company, or the person from whom the information is provided, or is required by law. Councillors' may retain indefinitely any confidential information relating to the Company which is lawfully in their possession subject to the terms of any Deed of Access, Insurance or Indemnity, by whatever name called, which may be in force from time to time.
- g. Must not make improper use of information acquired as throughout their role with the Company.
- h. Must not take improper advantage of their position.
- i. Must not allow any personal financial or commercial interest, or the financial or commercial interest of any associated person, to conflict with the interests of the Company.
- j. Should not engage in conduct likely to bring discredit upon the Company.
- k. Have an obligation, at all times, to comply with the spirit, as well as the letter of the law and with the principles of this Code.

### 1.2 Guidelines for the Interpretation of Principles

The following guidelines are intended to assist Councillors in complying with the core principles of the Code. They are not meant to be exhaustive and may be added to over time to address issues of importance as they arise.

### **1.3 Duties to the Company**

- a. Each Councillor should endeavour to ensure that the functions of the Council have been specified clearly, are properly understood and are competently discharged in the interests of the Company.
- b. A Councillor should endeavour to ensure that the management of the Company is competent and is devoting its best endeavours in the interests of the Company.
- c. In evaluating the interests of the Company, a Councillor should take into account the interests of the Members as a whole, but where appropriate and/or required by law should take into account the interests of creditors and others.

### **1.4 Duties to the Members**

- a. Each Councillor should endeavour to ensure that the Company is financially viable, properly managed and constantly improved so as to protect and enhance the interests of the Members.
- b. A Councillor should seek to ensure that all Members, or classes of Members, are treated fairly according to their rights as between each other.
- c. A Councillor should consider whether any benefit to be received by the Councillor or an associated person is of sufficient magnitude that the approval of Members should be sought, even though not required by law.
- d. A Councillor who is appointed to the Council at the instigation of a party with a substantial interest in the Company such as a major Member or a creditor should recognise the particular sensitivity of the position. Fiduciary duty requires the Councillor to make a contribution in the interests of the Company and the Members as a whole and not only in the interest of the nominators.
- e. Where obligations to other people or bodies preclude an independent position on an issue the Councillor should disclose the position and seriously consider whether to be absent or refrain from participating in the Council's consideration of the issue. Before taking the decision to be absent, a Councillor should consider whether that absence would deprive the Council of essential background or experience. The matter should be disclosed and resolved by the rest of the Council.

### **1.5 Duties to Creditors**

- a. Whilst the obligations of a Councillor are primarily owed to the Company, there are situations in which it is necessary to evaluate the interests of creditors. This is particularly so where the Company's financial position is uncertain or where insolvency may be pending. In cases of doubt, a Councillor should, with some urgency, seek professional advice.

## **1.6 Duties to Other Stakeholders**

- a. All companies and their Councillors must comply with the legal framework governing their operations and must be conscious of the impact of their business on society.
- b. Without limiting in any way the nature of the issues with which the Councillor must be concerned in the running of the business, particular attention should be paid to the environment, questions of occupational health and safety, industrial relations, equal opportunities for employees, the impact of competition and consumer protection rules, and other legislative initiatives that may arise from time to time.
- c. Although the Councillor owes a primary duty to Members of the Company as a whole, the responsibilities imposed on companies and the Councillor under various acts of parliament clearly demand that the Councillor evaluate actions in a broader social context.

## **1.7 Due Diligence**

- a. A Councillor should attend all Council Meetings but where attendance at meetings is not possible appropriate steps should be taken to obtain leave of absence.
- b. A Councillor must acquire knowledge about the business of the Company; the statutory and regulatory requirements affecting Councillors in the discharge of their duties to the Company; and be aware of the physical, political and social environment in which it operates.
- c. In order to be fully effective, a Councillor should insist upon access to all relevant information to be considered by the Council. This information should be made available in sufficient time to allow proper consideration of all relevant issues. In the extreme circumstances where information is not provided the Councillor should make an appropriate protest about the failure on the part of the Company to provide the information and if necessary abstain from voting on the particular matter on the basis that there has not been the time necessary to consider the matter properly. Any abstention and the reasons for it should be included in the Minutes. It may also be appropriate to vote against the motion or move for deferment until proper information is available.
- d. A Councillor should endeavour to ensure that systems are established within the Company to provide the Council, on a regular and timely basis, with necessary data to enable them to make a reasoned judgment and so discharge their duties of care and diligence. An internal audit of systems supporting the Council should be conducted regularly.
- e. A Councillor should endeavour to ensure that relations between the Council, the audit committee and the auditors are open, unimpeded and constructive. Similarly, the auditors should have direct and unimpeded access to the Councillor. A Councillor should be satisfied that the scope of the audit is adequate and that it is carried out thoroughly and with the full cooperation of management and the internal auditors.

- f. A Councillor shall endeavour to ensure the Company complies with the law and strives for the highest standards of business and ethical conduct
- g. A Councillor from time to time may need expert advice (whether it be legal, financial or some other professional advice and whether it relates to fiduciary or other duties) in order to discharge duties properly. If a Councillor wishes to seek such advice (the cost of which must be reasonable) the prior approval of the Chairman must be obtained, which approval will not be unreasonably withheld. The Councillor should ensure, to the extent possible, that any advice obtained is independent of the Company. In that regard wherever necessary the services of advisers external to those advising the Company may need to be sought. In any case of doubt separate independent advice should always be sought by the Councillors on matters that may impact on their position in relation to the Company.

### **1.8 Conflicts of Interest**

- a. A Councillor must not take improper advantage of the position as Councillor to gain, directly or indirectly, a personal advantage or an advantage for any associated person or, which might cause detriment to the Company.
- b. The personal interests of a Councillor, and those of family, must not be allowed to prevail over those of the Company's Members generally. A Councillor should seek to avoid conflicts of interest wherever possible. Full disclosure of the conflict, or potential conflict, must be made to the Council. In considering the issues, account should be taken of the significance of the potential conflict for the Company and the possible consequences if it is not handled properly. Where a conflict does arise, a Councillor must consider whether to refrain from participating in the debate and/or voting on the matter, whether to be absent from discussion of the matter, whether to arrange that the relevant Council papers are not sent, or, in an extreme case, whether to resign from the Council. Where a Councillor chooses to be absent from the meeting, consideration should be given as to whether expertise that would be contributed by the Councillor is otherwise available. In the case of a continuing material conflict of interest a Councillor should give careful consideration to resigning from the Council.

### **1.9 Use of Information**

- a. A Councillor must not make improper use of information acquired by virtue of the position as a director. This prohibition applies irrespective of whether the Councillor would gain directly or indirectly a personal advantage or an advantage for any associated person or might cause detriment to the Company.

- b. A Councillor who takes the serious step of resignation on a point of principle should consider whether the reasons for resignation should be disclosed to Members. In deciding whether or not to make public the reasons for resigning and composing any resignation statement, a Councillor should have regard to the following:
  - i. the duty not to disclose confidential information so as to damage the Company; and
  - ii. the duty to act bona fide in the interests of the Company.
- c. A Councillor who has been nominated to the Council by outside parties should recognise the particular sensitivity of the position and should be especially careful not to disclose confidential matters to the nominators unless the prior agreement of the Council has been obtained.

#### **1.10 Professional integrity**

- a. A Councillor must be prepared, if necessary, to express disagreement with colleagues including the CEO. However, in the absence of a need to express disagreement, a Councillor should be prepared to implement the decisions of the Council as a loyal Member of the Council.
- b. If there is any doubt about whether a proposed course of action is inconsistent with a Councillor's fiduciary duties then the course of action should not be supported. Independent advice should be sought as soon as possible to clarify the issue.
- c. When a Councillor feels so strongly as to be unable to acquiesce in a decision of the Council, some or all, of the following steps should be considered:
  - i. making the extent of the dissent and its possible consequences clear to the Council as a means of seeking to influence the decisions;
  - ii. asking for additional legal, accounting or other professional advice;
  - iii. asking that the decision be postponed to the next meeting to allow time for further consideration and informal discussion;
  - iv. tabling a statement of dissent and asking that it be minuted;
  - v. writing to the Chairman, or all Members of the Council, and asking that the letter be filed in the minutes; and
  - vi. if necessary, resign, and consider advising the appropriate regulator.
- d. "Opinion shopping" and the search for loopholes in the law is unacceptable.