



**Paper:** PRII National Council concerning Conflicts of Interest and Loyalty Policy  
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## Summary

Following on from recent work of the National Council to strengthen the organisation's corporate governance, this paper seeks to put in place a robust conflict of interest policy of the PRII. This paper sets out the main requirements under the Companies Act 2014 in that regard, as well as the PRII's Constitution. It is noted that at present, the PRII does not maintain, as required under the Companies Act, a Register of Directors' Interests. This needs to be addressed as a matter of urgency.

Given that all members of the PRII National Council come from the public relations community and that the PRII is a membership body, it is inevitable that issues may arise concerning sensitive company/industry information or conflicting interests. In this regard, directors are asked to familiarise themselves with Section 228 of the Companies Act 2014 and sub-sections (1) (d) and (f) in particular.

Disclosure of a potential conflict is not sufficient action by a director to satisfy their duties to the company as outlined in Section 228 of the Act. The director with the potential conflict has a responsibility to address these issues – the policy recommendations below seek to assist in the process and ensure legal compliance with the Act.

## Definitions

A conflict of interest arises when a director's private interests compete with their professional duties. A conflict of interest may arise, for example, if a board member influences the awarding of a contract to a company owned by a family member. It is legal to award a contract to the best qualified company, even if that company is owned by a relative, but the board member them self could not be part of the decision-making process. This would be a conflict of interest, because their own family would benefit financially from his position. A conflict of interest can also happen in relation to connections the board member might have that are unrelated to family connections, but to do with others with whom he/she may have a business connection.

A conflict of loyalty arises where a board member may be involved in board decisions and may be (or perceived to be) potentially influenced by considerations other than the best interests of the organisation. This might happen when the board member has come onto the board as a representative of a particular section of the membership. This situation may possibly cause the board member to think that they should act in the interests of the grouping which nominated them. However, in all cases, regardless of their route onto a board of directors, all board members should act in the interests solely of the organisation on whose board that they sit, rather than acting in the interests of the grouping which nominated them. Conflicts of loyalty may be sufficiently serious to amount to conflicts of interest.

The Register of Directors' Interests is a list of the interests and loyalties of the directors which may conflict with the interests of the organisation.

## Recommendations

To aid directors in their compliance, it is proposed that every year:

- (1) directors are asked to identify potential conflicts of interest and loyalty between their position as a PRII director, and any other directorships, shareholdings or employment they may hold presently, or anticipate holding in the future, or that a connected person to themselves may hold or anticipate holding. These shall be updated by the director if during their term the circumstances change. It should be noted that such a conflict does not need to be an actual conflict, rather any possibility of what a reasonable person might perceive as an overlapping interests should be declared;
- (2) directors are also asked to identify any contracts, benefits or financial relationships they may have with the PRII or seek to have, beyond ordinary membership of the Institute; and
- (3) the Board would, as a group, consider the abilities of individual directors to meet their obligations, and identify any potential hindrances to that.

Recommendations (1) and (2) would be written declarations that would be sent to the President of the PRII and to the Honorary Secretary. The Honorary Secretary would then ensure that those declarations are recorded in the Institute's Register of Directors' Interests. The President shall note in their report to each board meeting if any Director has not complied with these requirements, and shall report on same to any general meetings of the PRII. In the case of recommendation (3), this would be noted in the Minutes of the Institute and the President would report on this to any general meeting.

## Process

Following receipt of those declarations, and consideration of matters more generally, the President and Honorary Secretary will identify, before each board, whether an issue under Section 228 (1) (d) and/or (f) may arise. If such an issue is identified, this shall be communicated to the Director in question by the President and the proposed protective action outlined to the Director. If the director concurs with this course of action, it shall be noted in the Minutes of the relevant meeting(s). If it is not accepted by the director, the board in executive session will either meet solely for the purpose of discussing this item or it shall be the first item to be discussed at the next National Council meeting. The director in question shall have the opportunity to outline their position, but shall not be allowed to take part in the vote on the matter and will not be considered as part of the quorum for that portion of the meeting. Following consideration of the position of the President and Honorary Secretary, the board shall accept, reject or amend the position proposed and that position shall stand. A similar process shall take place where the President and Honorary Secretary have concerns relating to the provision of documents/information to a director which would normally be so provided.

In treatment of declarations and matters relating to the President or the Honorary Secretary, the Vice-President shall take the place of the interested party. If the Vice-President is not available, or is conflicted, the Treasurer shall take their place, or failing him/her the longest serving ordinary member of the National Council, or failing him/her the second longest serving ordinary member of the National Council, etc.

This annual process does not impact upon the general statutory requirement for Directors to declare interests as they arise, nor does it relieve them of their responsibilities under Section 228 of the Companies Act in any way shape or form.

At each meeting of the PRII National Council, a standing item of Declaration of Interests shall be added to be taken directly after matters arising. In those instances, the person in question shall absent themselves from the meeting while the other directors decide whether that director can participate in and/or vote on that matter. That decision shall be communicated to the director in question and the meeting will continue. The declaration and decision shall be noted in the Minutes and the Register of Interests.

## Companies Act 2014

### A Director's General Duties

The Companies Act 2014 places the previous common law duties of directors on a statutory footing. Those duties are set out in Section 228:

*228. (1) A director of a company shall—*

*(a) act in good faith in what the director considers to be the interests of the company;*

*(b) act honestly and responsibly in relation to the conduct of the affairs of the company;*

*(c) act in accordance with the company's constitution and exercise his or her powers only for the purposes allowed by law;*

*(d) not use the company's property, information or opportunities for his or her own or anyone else's benefit unless—*

*(i) this is expressly permitted by the company's constitution; or*

*(ii) the use has been approved by a resolution of the company in general meeting;*

*(e) not agree to restrict the director's power to exercise an independent judgment unless—*

*(i) this is expressly permitted by the company's constitution;*

*(ii) the case concerned falls within subsection (2); or*

*(iii) the director's agreeing to such has been approved by a resolution of the company in general meeting;*

*(f) avoid any conflict between the director's duties to the company and the director's other (including personal) interests unless the director is released from his or her duty to the company in relation to the matter concerned, whether in accordance with provisions of the company's constitution in that behalf or by a resolution of it in general meeting;*

*(g) exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both—*

*(i) the knowledge and experience that may reasonably be expected of a person in the same position as the director; and*

*(ii) the knowledge and experience which the director has;*

*and*

*(h) in addition to the duty under section 224 (duty to have regard to the interests of its employees in general), have regard to the interests of its members.*

*(2) If a director of a company considers in good faith that it is in the interests of the company for a transaction or engagement to be entered into and carried into effect, a director may restrict the director's power to exercise an independent judgment in the future by agreeing to act in a particular way to achieve this.*

*(3) Without prejudice to the director's duty under subsection (1)(a) to act in good faith in what the director considers to be the interests of the company, a director of a company may have regard to the interests of a particular member of the company in the following circumstances.*

*(4) Those circumstances are where the director has been appointed or nominated for appointment by that member, being a member who has an entitlement to so appoint or nominate under the company's constitution or a shareholders' agreement.*

In the cases of Section 228 (d), (e) and (f) above, the individual may be released from those responsibilities by virtue of a resolution of a general meeting or a specific release within the organisation's constitution. There is no such release in the constitution of the PRII. In the case of Section 228 (3), this does not apply to any PRII director as there is no such arrangement as described within Section 228 (4).

## Disclosure Requirements

Disclosure requirements are set out in Section 231.

*231. (1) It shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company, to declare the nature of his or her interest at a meeting of the directors of the company.*

*(2) Subsection (1) does not apply in relation to an interest that cannot reasonably be regarded as likely to give rise to a conflict of interest.*

*(3) The declaration required by this section to be made by a director shall—*

*(a) in the case of a proposed contract, be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he or she became so interested; and*

*(b) in the case of his or her becoming interested in a contract after it is made, be made at the first meeting of the directors held after the director becomes so interested.*

*(4) Subject to subsection (5), for the purposes of this section a general notice given to the directors of a company by a director to the effect that—*

*(a) he or she is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, or*

*(b) he or she is to be regarded as interested in any contract which may, after the date of the notice, be made with a specified person who is connected with him or her,*

*shall be deemed to be a sufficient declaration of interest in relation to any such contract.*

*(5) No such notice as is mentioned in subsection (4) shall be of effect unless it is given at the meeting of directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.*

*(6) A copy of every declaration made and notice given in pursuance of this section shall, within 3 days after the date of making or giving of it, be entered into a book kept by the company for this purpose.*

*(7) That book shall be open for inspection, without any charge, by any director, secretary, statutory auditor or member of the company at the registered office of the company and shall be produced at—*

*(a) every general meeting of the company; and*

*(b) any meeting of its directors if any of its directors so requests in sufficient time to enable the book to be available at the meeting.*

*(8) A company shall, if required by the Director of Corporate Enforcement, produce to the Director for inspection the book kept by it in accordance with subsection (6) and shall give the Director such facilities for inspecting and taking copies of the contents of the book as the Director may require.*

*(9) Nothing in this section shall be taken to prejudice the operation of any enactment or rule of law restricting directors of a company from having interests in contracts with the company.*

*(10) Any reference in this section to a contract—*

*(a) shall be read as excluding a reference to a contract the decision as to whether to enter into it is taken, or falls to be taken, other than by the board of directors or a committee of which the first-mentioned director in subsection (1) is a member;*

*(b) shall be read as including a reference to any transaction or arrangement, whether or not constituting a contract, but, in a case where the transaction or arrangement does not constitute a contract, a like limitation to that which applies under paragraph (a) applies to the construction of reference provided by this paragraph.*

*(11) For the purposes of this section, a transaction or arrangement of a kind described in section 239 made by a company for a director of the company or a person connected with such a director shall, if it would not otherwise be so treated (and whether or not prohibited by that section), be treated as a transaction or arrangement in which that director is interested.*

To summarise, it shall be the duty of a director of the PRII who is in any way, directly or indirectly or through a connected party, interested in a contract with the company, to declare the nature of his or her interest at a meeting of the directors of the company. For the purposes of this obligation, the term contract includes a reference to any transaction or arrangement, whether or not it constitutes a contract.

## PRII Constitution

In addition, the PRII's constitution states:

*"A Council Member who is in any way directly or indirectly interested in any contract, matter or thing which will or may result in the payment by the Institute to her/him, directly or indirectly of any fees or other benefit in money or money's worth for any services actually rendered or to be rendered or which may be rendered by any person (s) to the Institute shall declare the nature of that interest in accordance with the provisions of section 194 of the Act as amended and shall not vote in respect of any such contract, matter or thing in which s/he is so interested and if s/he shall so vote such vote shall not be counted nor shall such Council Member be counted in the quorum present at the meeting for the purposes of considering such contract, matter or thing."*