

This is a sample register of interests and related party transactions. On the following pages, you will find explanations of the purpose of each element of the register. The sample register of interests and related party transactions should be read in conjunction with Governance Institute's other sample documents.

KEY

= Explanatory Notes

These notes explain the purpose of each element of the minutes and are provided for education only. The explanatory notes should not appear in an agenda.



[COMPANY NAME]

A.B.N. XX-XXX-XXX-XXX

[Company name]

[Board of Directors/Board Committee/Management Committee]

Providing the company name at the top of the document clearly identifies the function of the company to which the register applies. It is also important to identify at which level of the organisation the register sits.

Register of interests and related party transactions

Name of director/officer	Description of interest	Has the company secretary been notified of the interest?	Is interest a material personal interest?	If the interest is material, has standing notice of the interest in accordance with ss 191 and 192 of the Corporations Act been provided to the board?	Date when disclosure given to the other directors	Steps taken by board for dealing with any conflicts of interest of a director	Actions taken by director or officer to address any actual or perceived conflict of interest
For example, John Smith	Director — JJJJJ Accountant Partners	Yes	Yes	01/06/12 minutes	01/06/12 minutes	Director not allowed to participate or vote in directors' meeting 01/07/13 see minute number X123	Director excused from meeting and did not vote in director's meeting 01/07/13

Description of proposed related party transaction	Related party name and reasons why related	Board meeting approval details	Voting restrictions at board meeting	Board determination details on whether expert's report required	Exemption reason from meeting of members	Company members meeting approval details
JJJJJ Accountant Partners used to assist in accounts	JJJJJ Accountant Partners used to assist in accounts	14/5/13 minutes	Yes	Not required	N/A	N/A

[COMPANY NAME]

A.B.N. XX-XXX-XXX-XXX

Name of director/officer	Description of interest	Has the company secretary been notified of the interest?	Is interest a material personal interest?	If the interest is material, has standing notice of the interest in accordance with ss 191 and 192 of the Corporations Act been provided to the board?	Date when disclosure given to the other directors	Steps taken by board for dealing with any conflicts of interest of a director	Actions taken by director or officer to address any actual or perceived conflict of interest
The inclusion of the name of the director / officer allows for each director to clearly demonstrate that they have disclosed any interests or transactions to the company which are material.	Under the provisions of s191(3) of the Corporations Act, a director must be able to articulate the 'nature and extent' of the interest. The interest need not be the subject of a conflict of interest at the time it is disclosed. Furthermore, the interest need not necessarily be of a financial or pecuniary nature.	It is good practice to advise the company secretary of the interest, as the company secretary will usually be responsible for keeping the register up to date.	Does the matter have a 'capacity to influence the vote of a particular director on the decision to be made'?	The standing notice should provide details of: <ul style="list-style-type: none"> the nature and extent of the interest and how the interest relates to the affairs of the company. 	The standing notice takes effect as soon as it is given and ceases to have effect when the directorship changes. It is important, therefore to re-circulate standing notices following any change in directorship on a company's board, for the notice to remain valid. The standing notice will also cease to have effect in relation to a particular interest if the nature or extent of the interest materially changes to that disclosed in the notice.	Directors of public companies who have a material personal interest in a matter being considered at a directors' meeting: <ul style="list-style-type: none"> must not be present while the matter is being considered at the meeting, and must not vote on the matter. 	In accordance with a director's duty not to misuse information gleaned because of their position, or their position in general to obtain a benefit or cause detriment to the company, a director has a positive obligation to ensure that they also take steps to address any actual or perceived conflict of interest

Description of proposed related party transaction	Related party name and reasons why related	Board meeting approval details	Voting restrictions at board meeting	Board determination details on whether expert's report required	Exemption reason from meeting of members	Company members meeting approval details
Details why the transaction may be considered to be a related party transaction	Details the related party and highlights the reasons why the transaction may result in a conflict of interest, by noting the relations between the parties	The board may meet to approve such a transaction	As above, directors of public companies who have a material personal interest in a matter being considered at a directors' meeting: <ul style="list-style-type: none"> must not be present while the matter is being considered at the meeting, and must not vote on the matter. 	The board may also choose to consult with independent experts, such as legal advisers on the details of proposed transactions	Details where the transaction has been adequately resolved by the board without the need to refer to the members	Highlights the details of the resolution which was put to members for decision at a member meeting

[COMPANY NAME]

A.B.N. XX-XXX-XXX-XXX

Register of interests and related party transactions

Directors and officers of a company are required to comply with the requirements of the *Corporations Act 2001* concerning the disclosure and appropriate management of transactions which involve their interests. These duties might include, for example good faith provisions and duties not to misuse their position or information for personal gain (ss 181, 182, 183 and 184 of the Corporations Act). These obligations can be met by a company secretary filing all standing notices, minuting them and tabling and circulating them as and when appropriate. However, company secretaries also recognise that it is good practice to maintain a register of material and personal interests and related party transactions. The development and implementation of a register of interests and related party transactions assists the company to put in place a 'paper trail' that demonstrates that directors and officers have complied with their obligations under the Corporations Act.

The onus of the obligation to disclose material and personal interests rests solely with a director. Directors are obligated to make full and frank disclosures regarding their material and personal interests, and it is not for other directors or the company secretary to draw conflicts of interest out of directors. Directors and officers should also be mindful that their interests may include potential or perceived conflicts; that is, those interests which — while not presently in conflict — have the potential to be, or may be perceived as being, in conflict with the best interests of the company. The failure to adequately manage perceived or potential conflicts of interest can result in adverse issues for companies to deal with.

Details of the interests they have might include:

- all other directorships of listed entities or entities that may have dealings with the company
- any other directorships and memberships that place demands on their time (that is, that could detract unreasonably from the time they have available to allocate to the company's affairs)
- their shareholding in the company, and any subsequent changes to their shareholding
- all substantial shareholdings in other companies with which this company transacts or in which it owns shares
- property or interest in a business that might have some interaction with the company or
- other interests that may be relevant, for example, a director's spouse's interests.

In essence, directors and officers of a company are required to make disclosures on any information which is 'material' and/or 'personal'. 'Material personal interest' is not defined in the Corporations Act. The materiality of an interest will depend on the circumstances of each case and will be a matter of judgment for the director and is to be determined having regard both to what is material to the company and what is material to the director. In the context of conflicts of interest, 'material' may be interpreted to mean that a matter has a 'capacity to influence the vote of a particular director on the decision to be made'. This might include assessing whether a director has a financial tie to the interest, or otherwise assessing the nature of the relationship.

Section 191(3) of the Corporations Act states that directors (but not other officers) who have a material personal interest in a matter that relates to the affairs of the company must disclose that interest to the other directors (s 191) unless the interest is captured by the exemptions listed in s 191(2). Upon being appointed as a director, it is good practice for a director to disclose their material personal interests in a 'standing notice'. The company should have a policy which sets out the guiding principles for the disclosure of material personal interests and any other directors' interests that have the potential to become 'material' or which could become the subject of a conflict of interest.

These guiding principles will usually ensure that the disclosure is provided to the other directors 'as soon as is practicable' after the director becomes aware of their interest in the matter.

Under s 192(2) notice to the other directors of the nature and extent of the interest may be provided in the following ways:

- disclosed at a directors' meeting (orally or in writing), and recorded in the minutes of the meeting, or
- provided to the other directors individually in writing.

If disclosure is provided to directors individually, a standing notice must be tabled at the next meeting under the provisions of s 192(3).

Reference should be made to Governance Institute of Australia's Good Governance Guide: *Issues to consider when developing a policy on disclosure of and voting on matters involving a director's material personal interests*, which sets out the issues to consider when developing a policy on these matters. The Good Governance Guide also provides guidance on the process for managing conflicts of interest when directors are voting on decisions of board meetings where such conflicts arise, including restrictions on voting.

It should be noted that 'registers' are living documents which means that they should be updated regularly with subsequent disclosures, and reviewed by the board of directors on a regular basis. If there is a change to such conflict or related party transactions, a further oral or written notice should be provided at the board meeting or a written notice submitted to the company secretary who will advise the board of the changes.

Related party transactions

Under s 208 of the Corporations Act, for a public company to provide a financial benefit to a related party of the public company, either:

- the company's members must approve the transaction, or
- the giving of the financial benefit must fall within an exception set out in ss 210 to 216.

The exemptions provided in ss 210 to 216 require an understanding of the relationship between the related parties. Member approval is not required for transactions that involve:

- transactions that are on arm's length terms (s 210)
- benefits that are reasonable remuneration or reimbursement of officers' and employees' expenses (s 211)
- the payment of indemnities, exemptions, insurance premiums and payment for legal costs for officers (s 212)
- small amounts given to a related entity (s 213)
- the giving of benefit to or by closely held subsidiary (s 214)
- the giving of benefits to members that do not discriminate unfairly (s 215)
- an order of a court (s 216).

Listed companies must also be aware of the ASX Listing Rules on transactions with persons in a position of influence. Companies may, under the provisions of Chapter 10 of the ASX Listing Rules be required, for example, to seek shareholder approval for a transaction with a person of influence, or prepare and disseminate the advice of an independent expert on the proposed transaction.

As with conflicts of interest, directors will be prohibited from participating in voting procedures associated with transactions with related parties. Section 228 of the Corporations Act defines related parties as including:

- directors of the company
- directors of any entity that controls the company
- spouses of a director of the company, or a director of any entity that controls the company
- parents and children of a director of the company, or a director of any entity that controls the company
- an entity that controls the company
- an entity controlled by any of the above (unless the entity is also controlled by the company)
- an entity that was one of the above in the past six months
- an entity that believes or has reasonable grounds to believe that is likely to become one of the above at any time in the future, and
- an entity acting in concert with any of the above related parties on the understanding that the related party will receive a financial benefit if the company gives the entity a financial benefit.

Reference should be made to Governance Institute of Australia's Good Governance Guide: *Issues to consider when developing a policy or process for managing related party transactions*.