

Policy

Managing Conflicts and Directors' Interests

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1. PURPOSE & SCOPE

Directors and officers of Contango MicroCap Limited (CTN or the Company) have duties concerning the disclosure and appropriate management of transactions which involve their interests. In addition, they owe duties to the Company to act in good faith, in the best interests of the Company, and not misuse their position or information obtained for personal gain.¹

Good governance starts with the ethics and principles of each board director. If the board behaves ethically and lawfully, this sets the standard for the rest of the organisation and has a fundamental influence on dealings with all stakeholders.

The purpose of this Policy is to set out the process to be followed by CTN directors in regard to:

- (a) disclosing and managing conflicts and personal interests;
- (b) voting on board matters involving a conflict or personal interest;
- (c) identifying and managing related party transactions;
- (d) communicating with the Senior Portfolio Managers; and
- (e) disclosing their shareholdings, in particular those also held in the Company's investment portfolio.

2. CONFLICTS & MATERIAL PERSONAL INTERESTS

2.1 Conflicts of Interest & Duty

A conflict of interest arises where a director has a personal or professional interest that:

- (a) conflicts with the interests of the Company; or
- (b) may reasonably be perceived to conflict with the interests of the Company, the effect being that the director is no longer in a position to make an impartial decision.

A conflict of duty, on the other hand, is a conflict between two different legal or ethical duties. A conflict of duty arises when a director's obligations to one company are compromised by his or her obligations to another company. For example, where a director of the Company is entering into a material contract with another company of which they are also a director.

The Corporations Act requires directors to disclose any conflicts they have, or may have.² Conflicts are not fatal to an arrangement, providing they are appropriately disclosed and managed.

2.2 Material Personal Interests

Whether a director has a **material personal interest** in a matter relating to the Company will depend on the circumstances of each case. One question to ask is: Would a reasonable person conclude that the interest has the potential to influence a director on the decision to be made? It will therefore be a matter of careful judgment for the director, having regard to what is material to the director and what is material to the Company. A material personal interest may not necessarily be a conflict.

If a director has a 'material personal interest' in a matter that relates to the affairs of the Company they must give the other directors notice of that interest.³ The notice must give details of the nature and extent of the interest, and how it relates to the affairs of the Company.

¹ Per ss180-183 Corporations Act.

² Corporations Act s191.

³ Corporations Act s191.

3. DISCLOSING CONFLICTS & MATERIAL PERSONAL INTERESTS

Directors must notify the Company Secretary as soon as practicable after they become aware of any conflicts, potential conflicts or personal interests that *have the potential to become material*. Such matters might include:

- (a) directorships of other companies
- (b) their Related Parties⁴ (see section 4 below)
- (c) shareholdings or interests in persons or companies who have dealings with the Company or its related entities

Directors of the Company are encouraged to disclose any personal interests, which although not material, *have the potential to become material*. The question of materiality can be properly determined by the board in the context of the particular matter before it.

3.1 The Register of Directors' Interests – standing notice

The obligation on a director to notify other directors of any conflicts or material personal interests can be satisfied by the director serving a 'standing notice' detailing the nature and extent of the interest.⁵ The nature and extent of the interests disclosed in the Register must be recorded in the minutes of the meeting in which the standing notice is tabled.⁶

The Register of Directors' Interests serves as a standing notice for these purposes.

Disclosure should be made to the Company Secretary who will add the interest to the Register of Directors' Interests, and table the Register at each board meeting. Directors will be asked to confirm the accuracy of the Register, and the result will be minuted.

Incoming directors should receive a copy of Director's Questionnaire in their induction pack, and complete and return it to the Company Secretary prior to their appointment. The Company Secretary will use the information supplied in the Director's Questionnaire to update the Register for tabling at the next board meeting.

3.2 Dealing with Conflicts & Material Interests at board meetings

Where a director has a personal interest (as disclosed in the Register) that relates to an agenda item, it might be necessary for the board papers for that particular matter to be withheld from the director. Where the Company Secretary identifies such an issue in advance of the board meeting, they will discuss the matter with the Chair and, in conjunction with the director, determine the appropriate course to take.

The Agenda for each board and committee meeting should include a standing item entitled 'Disclosure of Interests'. Directors should be asked to disclose at the commencement of each meeting if they have a conflict or material personal interest in relation to any item on the meeting agenda.

If, during a board meeting, a director identifies a conflict or material personal interest, the Company's constitution⁷ requires that the director must not be present while the matter is being discussed, or vote on the matter, unless the directors without an interest pass (and minute) a resolution that:

- (a) identifies the director and the nature and extent of the material personal interest and its relation to the affairs of the company; and
- (b) those directors are satisfied that the personal interest should not disqualify the

⁴ Within the meaning of the Corporations Act s228.

⁵ Corporations Act s192(1).

⁶ Corporations Act s192(4).

⁷ This process mirrors s195 Corporations Act.

director from being present or voting on the matter, for example because it's in the best interest of the company and the director's interest is not material.

This mirrors the process set out in the Corporations Act.⁸

4. RELATED PARTY TRANSACTIONS

There is a risk that the interests of a related party may influence the decision-making of directors to the detriment of the interests of shareholders when an entity is considering whether to enter into a transaction with a related party.

Accordingly, the Corporations Act⁹ provides that if a public company (or its controlled entities) wishes to give a financial benefit to a related party:

- (a) it must obtain shareholder approval¹⁰; or
- (b) giving the financial benefit must fall within a permitted exception.¹¹

The process requiring directors to disclose their material personal interests in paragraph 3 above, assists the board to determine if any transaction being entered into is a related party transaction.

4.1 Who is a related party?

Related parties are defined in the Corporations Act¹² and include:

- (a) directors of the company;
- (b) spouses of a director of the company;
- (c) parents and children of a director of the company;
- (d) an entity that controls the company;
- (e) an entity controlled by any of the above (unless the entity is also controlled by the company);
- (f) an entity that was one of the above in the past six months;
- (g) an entity that believes or has reasonable grounds to believe it is likely to become one of the above at any time in the future; and
- (h) 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.

4.2 What is a financial benefit?

The definition of financial benefit is very broad. Where some sort of benefit or arrangement is entered into with a related party, it is likely the arrangement will constitute the giving of a financial benefit. Specific examples of financial benefits include:

- (a) giving and receiving services;
- (b) leasing an asset;
- (c) issuing securities;
- (d) granting options; and
- (e) releasing obligations to pay.

Financial benefits may also be given:

- (a) indirectly, for example through one or more interposed entities;

⁸ Per s195.

⁹ Per s208.

¹⁰ In the manner prescribed by ss217-227 of the Corporations Act.

¹¹ Per ss210-216 Corporations Act.

¹² Per s228 of the Corporations Act.

- (b) by making an informal agreement, oral agreement or an agreement that has no binding force; and
- (c) in situations in which no money is paid, for example, where a financial advantage is provided.

4.3 The 'Arm's Length' exception

Under the Corporations Act, member approval is generally not required for:

- (a) transactions that are on arm's length terms;¹³
- (b) benefits that are reasonable remuneration or reimbursement of officers' and employees' expenses; and
- (c) certain other transactions or financial benefits given under a court order.

The arm's length exception applies where the terms given to the related party would be reasonable in the circumstances if the company and the related party *were dealing at arm's length*, or on terms that are less favourable to the related party.

When considering whether the arm's length exception applies to the financial benefit at hand, ASIC has issued the following guidance in RG 76:

- *Comparable transactions:*
A good indicator of arm's length terms is to consider how the terms of the overall transaction compared with those of a comparable transaction completed between unrelated parties. Consider whether there are any key provisions and terms that appear excessively onerous or generous and are therefore less likely to be considered reasonable.
- *Nature of the bargaining process:*
The nature and content of the bargaining process, including how the transaction was initiated, structured, negotiated and disclosed to directors. It's not necessary to show that the parties negotiated on an arm's length basis to decide the terms. However, factors relating to how the parties conducted themselves in forming the terms are relevant in deciding whether the outcome of negotiations could reasonably have been achieved by uninfluenced, self-interested parties in the circumstances.
- *Impact of the transaction on Company:*
Consider whether:
 - there is a negative effect on the company's financial position or performance that is not balanced by the positive effects;
 - the transaction fits within the business plan of the entity, and
 - whether the terms are fair, given the expected return on the relevant asset.

Some further examples of the factors to consider when determining whether the board can rely on the arm's length exception are included in Annexure 1.

4.4 Dealing with a related party transaction at board meetings

In the event a related party transaction is identified prior to being considered by the board, it should be handled as follows:

- (a) A briefing of the potential conflict should be provided to the board, by way of a stand-alone agenda item, including details of the proposed transaction, the parties concerned and the nature of their relationship. The briefing should also state whether and why any exemption to obtain shareholder approval is available (by way of legal advice, for example, from the General Counsel).
- (b) Where the board resolves that a proposed transaction is subject to an exemption and does not require shareholder approval, it should ensure that a resolution to this effect is

¹³ Per s210 Corporations Act.

minuted. If it decides that shareholder approval is necessary, it should set in place the procedures for seeking such approval.

- (c) Upon determining that an exemption applies and proceeding to vote on the transaction, the board should follow the same process outlined in section 3.2 above. Where the board has identified a related party by reason of a particular director's relationship with that person, it is best practice for that director to remove themselves from the discussion and abstain from voting on the matter. The director may continue to be present and vote if the other directors who do not have an interest pass the resolution described in section 3.2 above, however it is difficult to see how this could be achieved once a related party status has been established.

5 CTN DIRECTORS' COMMUNICATIONS WITH THE PORTFOLIO MANAGER

CTN has appointed Contango Funds Management Limited to provide investment management services (the **Manager**). Under the terms of the Investment Management Agreement between the Company and the Manager, the Manager is responsible for reporting to the Company in the respect of portfolio performance and activity. The Manager, at the invitation of the Board, provides updates at the CTN Board Meetings with respect to the Portfolio's positions, performance, activity, alignment with the investment strategy and investment guidelines and related information requested from the Board. The Board and the Manager consider that this forum is appropriate for these discussions and interactions to be had as it provides appropriate level of transparency. To ensure the independence of the Manager's investment decisions, the Board considers its directors should not communicate with the Manager's individual portfolio managers on matters pertaining to the Company's investment portfolio. All communications or information requests for the Manager should be directed to the Managing Director of the Manager.

6 DISCLOSURE OF DIRECTORS' SHAREHOLDINGS

6.1 Notifying ASX of directors' relevant interests

Pursuant to ASX Listing Rule 3.19A, CTN must notify the ASX (via an Appendix 3 announcement) of **any changes** that occur in a director's Relevant Interest in CTN within 5 business days of such Dealing taking place.¹⁴ The annual directors' report must also include similar details.¹⁵

A person has a Relevant Interest in a security if they are the registered holder of the security or if they have the power to control voting or disposal in respect of the security, irrespective of how remote the interest is.¹⁶ Accordingly, a Relevant Interest may arise if:

- (a) the securities are jointly held by a director and another person (eg spouse or family member);
- (b) the securities are held in the director's family trust or superannuation fund; or
- (c) the securities are held by a company in respect of which the director has direct or indirect control over 20% of the voting power.¹⁷

Accordingly, as soon as practicable after Dealing in CTN Securities, directors of CTN must notify the Company Secretary of the trade and provide a copy of the trade confirmation, so that the Company Secretary may lodge the requisite ASX notices and update the Register of Directors' Interests, in order for the Register to be tabled and minuted at the next CTN board meeting.

¹⁴ Directors also have a personal obligation to notify the ASX of their Relevant Interests pursuant to s205G. However, an Appendix 3X, 3Y or 3Z lodged by CGA pursuant to ASX Listing Rule 3.19A satisfies the director's personal obligation to notify the ASX about its change in interest within 14 days, pursuant to s205G of the Corporations Act. See Class Order [CO 01/1519] Disclosure of directors' interests.

¹⁵ Corporations Act s300(11) and (12).

¹⁶ Corporations Act s 608(1).

¹⁷ Corporations Act s 608(2), (3).

6.2 Notifying ASX of substantial holdings

The Corporations Act requires persons (including CTN directors) to give a notice to both CTN and the ASX if they (together with any Associates) begin to have, or cease to have, a Substantial Holding in CTN or if they have a Substantial Holding and there is a movement of at least 1% in their holding.¹⁸ The notice must be lodged within 2 business days after they become aware of the information.

A Substantial Holding is a Relevant Interest of 5% or more (of the voting power of those shares) under the control of the director and/or their Associates.¹⁹ Associates include:

- (a) a body corporate controlled by the director;
- (b) another person acting, or purporting to act, in concert with the director in relation to CTN's affairs; or
- (c) a person with whom the director has, or proposes to enter into an agreement, for controlling or influencing the composition of the CTN board or the conduct of the entities affairs.²⁰

It is the responsibility of CTN directors to lodge the applicable forms²¹ (with assistance from the Company Secretary) where their Relevant Interest in CTN meets the Substantial Holding thresholds.

The purpose of the substantial holding provisions is to ensure that holders, directors and the market have timely access to sufficient information about the controllers of substantial blocs of voting shares.

Further information is contained in ASIC Regulatory Guide 5: *Relevant Interests and substantial holding notices*.

6.3 Directors' shareholdings which are also in the Company's investment portfolio

All shareholdings held by CTN directors and their Related Parties must be initially disclosed to the Board. The Register of Directors' Interests will record those shareholdings which are also included in CTN's investment portfolio. At each board meeting, it is the responsibility of directors to provide updated disclosure of this information, for example due to any changes in their shareholdings and/or changes in the investment portfolio's holdings.

APPROVED BY THE BOARD ON 1 JUNE 2017

¹⁸ Corporations Act s671B.

¹⁹ Corporations Act s9.

²⁰ Corporations Act s12(2).

²¹ Form 603 - *Notice of initial substantial shareholder*; Form 604 - *Notice of change of interest*; Form 605 - *Notice of ceasing to be a substantial shareholder*.

ANNEXURE A: FACTORS TO CONSIDER WHEN RELYING ON THE ARMS-LENGTH EXCEPTION IN A RELATED PARTY TRANSACTION

Factors	Guidelines
How the terms compare with those of any comparable transactions between the parties dealing on an arm's length basis in similar circumstances	<ul style="list-style-type: none"> • Are key terms of the transaction excessively onerous or generous as compared with terms that would be negotiated in the open market in similar circumstances? • If there is no reliable data about comparable transactions between parties dealing at arm's length, then other factors may be more important in determining whether or not to seek member approval.
The nature and content of the bargaining process	<ul style="list-style-type: none"> • Did the company follow protocols to ensure that conflicts of interest were appropriately managed in negotiating and structuring the transaction? What impact has an interested director, being privy to or participating in negotiations, had on the terms of the transaction? • How have the parties conducted themselves in the bargaining process? Is the proposed transaction documented and binding? Have professional advisers been involved in the negotiation process? What was the length and sincerity of the bargaining process?
The impact that the transaction will have on the company, including the impact on its financial position	<ul style="list-style-type: none"> • How do the terms impact on the financial position of the company? • Does the transaction fit within the company's business plan? • Are the terms fair, given the expected return on the asset, associated risks and liquidity of the asset? • Does the company have the option not to proceed or change direction if the terms during negotiations do not meet performance expectations?
Any other alternatives available to the company	<ul style="list-style-type: none"> • The terms of alternate options available to the company will provide a ready comparison of the terms that can reasonably be obtained between unrelated parties.
Any expert advice received by the company on the transaction	<ul style="list-style-type: none"> • Directors should ensure they have access to enough expertise to assess all aspects of a proposed related party transaction. • Directors relying on information or professional advice must make their own independent assessment of this information or advice.