

APPENDIX I - CONFLICT OF INTEREST GUIDELINES

Conflict of Interest Guidelines for Full-time and Part-time Members of the Canada-Newfoundland Offshore Petroleum Board.

1. Definitions

In these guidelines the following definition will apply:

- a) "Auditor General" means the Auditor General of the Province of Newfoundland and Labrador;
- b) "Board" means the Canada-Newfoundland Offshore Petroleum Board;
- c) "Business Entity" means a person, partnership, association or corporation which engages in or which in the knowledge of the member is about to become engaged in operations or in the provision of goods or services respecting the exploration, development, production, conservation, transporting or processing of petroleum within the Offshore Area;
- d) "Chairman" means the chairman of the Board;
- e) "Controlled Assets" means assets, the value of which could reasonably be expected to be affected by Board decisions;
- f) "Declarable Assets" means assets of substantial value, or any investment or business relationship in the petroleum sector not related to the Offshore Area which could be perceived as potentially giving rise to a conflict of interest;
- g) "Federal Minister" means the Minister of Energy, Mines and Resources;
- h) "Full-time Member" is a salaried Board Member;
- i) "Implementation Acts" means the Canada-Newfoundland Atlantic Accord Implementation Act, c.3, S.C. 1987 and The Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act, c.37, S.N. 1986;
- j) "Member" means a part-time or full-time member of the Board appointed pursuant to the Implementation Acts;
- k) "Offshore Area" means the offshore area as defined under the Implementation Acts;
- l) "Part-time Member" is a Board Member receiving an annual retainer and per diem fees while engaged on Board business;
- m) "Provincial Minister" means the Provincial Minister of Energy;

- n) "Relative" in relation to a Member, means the spouse of that Member or son, or daughter of that Member or of his or her spouse. For purposes of these guidelines spouse includes common-law arrangements;

2. Principles

- 2.1 Members will act honestly and in good faith with regard to the general interests of the Board. In compliance with this general provision, Members will conform to the following principles:
- i) Members have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;
 - ii) Members shall not step out of their official roles to assist private entities or persons in their dealings with the Board where this would result in preferential treatment to any person;
 - iii) Except as provided as a condition of their appointments Members shall not use or allow the use of Board property of any kind, including property leased to the Board, for other than Board purposes;
 - iv) Members shall take care to avoid being placed or giving the appearance of being placed under an obligation to any person or organization that might profit from special consideration on the part of the Member;
 - (v) Members will perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of the Board are conserved and enhanced;
 - (vi) On appointment to office, and thereafter, Members will arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising, but if such a conflict does arise between the private interests of a Member and the official duties and responsibilities of that Member, the conflict shall be resolved with regard to the best interests of the Board;
 - (vii) Members will not solicit or accept transfers or economic benefits other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the Member;
 - (viii) Members will not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public; and
 - (ix) Members will not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

3. Prohibited Activities

3.1 Full-time Members shall not, outside their official duties:

- i) engage in the practice of a profession;
- ii) actively manage or operate a business or commercial activity;
- iii) retain or accept directorships or offices in a Business Entity; or
- iv) serve as a paid consultant;

unless information in sufficient detail to describe the activities is provided in writing to the Federal and Provincial Ministers, and their written approval is first obtained.

3.2 Members shall not in respect of their powers, duties and functions under the Implementation Acts, accord preferential treatment to Relatives or Friends or to organizations in which Relatives or Friends have an interest.

3.3 A Member shall disqualify himself or herself from participation in the process of appointments or promotions of Board staff where he or she may be in a position to in any way influence the decision to appoint or promote a Relative.

4. Investments and Other Financial Interests

4.1 Controlled Assets

4.1.1 During the term of a Member's appointment such Members shall not acquire any Controlled Assets nor enter into any agreement with a Business Entity.

4.1.2 If at the time of appointment, a Member or his or her Relative in the knowledge of the Member, holds any Controlled Assets, is party to an Agreement with a Business Entity, or has or later acquires an interest as a result of which there is a possibility of a conflict between such an interest and his position as a Member, the Member shall:

- i) table at the next regular Board meeting, a written declaration in sufficient detail to describe the Controlled Assets or the nature of the agreement or interest, for disclosure to the other Members and for filing with the minutes of such Board meeting; and
- ii) if a change in such Controlled Assets or agreements is made, table at the next regular Board meeting following such change a written declaration of such change for disclosure to the other Members and for filing with the minutes of such Board meeting.

4.1.3 Following the action noted in 4.1.2, where a Member owns Controlled Assets, he or she must either sell them in an arm's length transaction or make them subject to a trust arrangement.

4.1.4 Confirmation of sale and a copy of any executed trust instrument shall be filed with the Auditor General, and with the exception of a statement that a sale has taken place or that a trust exists, all information relating to the sale and the trust is confidential.

4.1.5 For the purposes of these Guidelines, trust arrangements shall be such that they do not leave in the hands of the Member any power of management or decision over the assets placed in trust.

However, the trust agreement may include general parameters which may be modified from time to time, such as to what extent equities will be chosen for investment as compared to fixed interest securities.

4.1.6 The Auditor General has the responsibility for determining that trust arrangements meet the requirements of these Guidelines.

4.1.7 A Member shall be reimbursed by the Board for all reasonable trust costs incurred as a result of creating, administering and terminating a trust under these guidelines, but these costs shall not include any loss of investment or value of property while held in trust.

4.2 Declarable Assets

4.2.1 Members shall, within a reasonable period of time after their appointment, provide to the Auditor General a written statement of any "Declarable Assets" held by the Member.

4.2.2 The Auditor General shall review the written statement of Declarable Assets and, following consultation with the Member, shall determine whether ownership of any of the assets places or could place the Member in a real or perceived conflict of interest situation.

4.2.3 Where the Auditor General makes a determination that there is a real or potential conflict of interest with respect to a Declarable Asset pursuant to sub-section 4.2.2, he shall either deem the asset to be a Controlled Asset for purposes of these guidelines or he shall reach agreement with the Member to eliminate the potential conflict of interest with respect to the asset.

4.2.4 Where a Declarable Asset is deemed by the Auditor General, pursuant to sub-section 4.2.3, to be a Controlled Asset, the Member shall comply with the provisions of these guidelines as if the asset was a Controlled Asset. Where the Member and the Auditor General reach an agreement referred to in sub-section 4.2.3, the Member shall comply with the provisions of the agreement.

4.2.5 Where a Member disagrees with any determination by the Auditor General pursuant to sub-section 4.2.3 or sub-section 4.2.4, he may seek a Ministerial determination with respect thereto in accordance with section 10.1.

5. Voting and Discussions at Board Meetings

- 5.1 If a Member holds or has knowledge that his or her Relative holds any right, interest or share in, or is party to an agreement with a Business Entity the Member shall leave any meeting of the Board prior to discussion of, and not vote on, any matter coming before the Board involving such Business Entity in any way.

6. Information and Advice

- 6.1 A Member shall keep in confidence all information coming to the attention of the Member as a consequence of the Member's association with the Board or attendance at Board meetings, excepting information generally available from public sources.
- 6.2 A Member shall not:
- i) discuss any matters arising from Board meetings with any person other than other Full or Part-time Members of the Board, Board staff members authorized by the Chairman or staff members of the federal or provincial governments authorized by the Chairman or authorized by the respective ministers as defined in the Implementation Acts, or such other person as the Chairman or by-laws may authorize;
 - ii) offer any advice or comments of any kind to a Business Entity concerning activities, business opportunities or investment opportunities based upon, or referring to, any information obtained by the Member's association with the Board or at the Board's meetings, except where such information is already part of the public domain.

7. Gifts

- 7.1 A Member, in his or her capacity as a Member, shall not accept any gift or benefit, other than of nominal or token value.
- 7.2 A Member shall return to the sender any gift of greater than nominal or token value as described in 7.1.

8. Post-Employment/Appointments

- 8.1 If a full-time Member, during the term of his or her appointment, receives from any Business Entity an offer of employment including employment as a consultant, or an offer of a partnership or directorship, that Member shall at the next regular meeting of the Board table a written declaration of such offer describing in sufficient detail the nature of the arrangement, which shall be disclosed to the other Members and filed with the minutes of such Board meeting.
- 8.2 Where an offer has been received by a full-time Member, the Member shall notify and consult with the Federal Minister and the Provincial Minister concerning any offer he or she proposes to accept.

- 8.3 Upon acceptance of an offer as described in 8.1 or while such offer is still outstanding, the full-time Member shall leave any meeting of the Board prior to discussion of, and shall not vote on any matter coming before the Board involving such Business Entity in any way.
- 8.4 Full-time Members shall not, within six months after leaving office, accept appointment to a board of directors, employment with or employment as a consultant to, or make representations for, or on behalf of, any Business Entity with which they have had significant official dealings during the period immediately prior to the termination of their service with the Board (excepting for employment concerned with matters unrelated to the Offshore Area), unless he or she has first notified and consulted with the two Ministers.
- 8.5 A former Member shall not act for, or on behalf of, any Business Entity in respect of any ongoing specific negotiations for which he or she acted or has advised the Board.
- 8.6 Members will not draw on privileged information or on the services of Board employees in an endeavour to secure future employment.
9. Failure to Comply
- 9.1 Where a Member does not comply with the provisions of these guidelines, that Member shall be subject to such appropriate measures as may be determined jointly by the Federal Minister and the Provincial Minister.
10. Ministerial Determination
- 10.1 A Member or former Member may apply to both the Federal Minister and Provincial Minister for any determination respecting that Member's compliance or non-compliance with these guidelines. In considering such an application, the Federal Minister and provincial Minister may jointly waive any requirement including any limitation period specified within these guidelines.

SCHEDULE TO CONFLICT OF INTEREST GUIDELINES

TRUSTS

1. The following trusts are examples of the most common trusts that may be established for the purpose of divestment:
- (a) Blind Trust

A blind trust is one in which the trustee makes all investment decisions concerning the management of the trust assets with no direction from or control by the person who has placed the assets in trust.

No information is provided to the person (settlor) except information that is required by law to be filed. A person who establishes a blind trust may receive any income earned by the trust, add or withdraw capital funds, and be informed of the aggregate value of the entrusted assets.

(b) Frozen Trust

A frozen trust is one in which the trustee maintains the holdings essentially as they were when the trust was established. Persons who establish a frozen trust are entitled to any income earned by the trust.

Assets requiring active decision-making by the trustee (such as convertible securities and real estate) or assets easily affected by Government action are not considered suitable for a frozen trust.

(c) Retention Trust

A retention trust is one in which the trustee maintains rights in holding companies, established for estate planning purposes, essentially as they were when the trust was established. The settlor makes arrangements to have third parties exercise his or her voting rights in relation to the shares in the holding companies as long as such arrangements will not result in a conflict of interest. Retention trusts usually do not generate income for the settlor.

This form of divestment is useful for a person who has assets to be held under special proper management through a holding company for estate planning purposes.

PROVISIONS COMMON TO ALL TRUSTS

2. Provisions common to all trusts are:

(a) Custody of the Assets

The assets to be placed in trust must vest in the trustee.

(b) Power of Management or Control

The person (settlor) shall not have any power of management or control over trust assets. The trustee, likewise, may not seek or accept any instruction or advice from the person concerning the management or the administration of the assets.

However, the settlor may include in the trust agreement general management parameters which may be modified from time to time, such as to what extent equities should be chosen for investment as compared to fixed interest securities.

(c) Schedule of Assets

The assets placed in trust shall be listed on a schedule attached to the trust agreement.

(d) Duration of Trust

The term of any trust is to be for as long as the person who establishes the trust continues to hold an office that makes that method of divestment appropriate. A trust may be dismantled once the trust assets have been depleted.

(e) Return of Trust Assets

Whenever a trust agreement is dismantled, the trustee shall deliver the trust assets to the person.

TRUSTEES

3. Care must be exercised in selecting trustees for each type of trust arrangement. If a single trustee is appointed the trustee should be:
 - (a) a public trustee;
 - (b) a company, such as a trust company or investment company, that is public and known to be qualified in performing the duties of a trustee; or
 - (c) an individual who performs trustee duties in the normal course of his or her work.
4. If a single trustee is appointed he or she will clearly be at arm's length from the settlor.
5. If more than one trustee is selected, at least one of them shall be a public trustee or a company at arm's length from the settlor.

TRUST INDENTURE

6. Acceptable blind, frozen and retention trust indentures should be available from the Auditor General. Any amendments to such trust indenture shall be submitted to the Auditor General before it is executed.
7. Under the trust options available, Members are required to file with the Auditor General a copy of any trust instrument. Except for the fact that a trust exists, detailed trust information will be kept in the Member's confidential file and will not be made available to anyone for any purpose.