

CATALINA COUNTRY CLUB LIMITED

ABN 20 000 256 155

CODE OF CONDUCT FOR DIRECTORS

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Code of Conduct for Directors - Catalina Country Club Limited

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THE FOUNDATION OF THE CODE

The Director must act honestly, in good faith, and to the best of his or her ability in the interests of the company. The Director must not allow conflicting interests or personal advantage to override the interests of the company. The company must always come first.

(Professor Robert Brat, Duties and Responsibilities of Directors and Officers, Australian Institute of Company Directors, 1998, p24)

INTRODUCTION

The Board of Directors of the Club (the “Board”) undertakes to support and apply this Code of Conduct for Directors (the “Code”) in a manner which encourages the responsible behaviour of Directors and management.

A person who accepts the office of a Director of the Club accepts the responsibilities of reasonable care, honesty, impartiality, confidentiality and loyalty. These responsibilities include acting collectively to manage the business and affairs of the Club.

A person who accepts the office of a Director of the Club also acknowledges that the standard of these responsibilities is no different from the standards expected from a Director of any type of company.

This Code supplements the Club’s policies and procedures regarding Directors and employees and applies in conjunction with those policies and procedures.

ELECTION OF DIRECTORS

Each nominee for election to the Board will sign a Statutory Declaration to the effect that he or she is aware of his or her responsibilities as a Director under the Corporations Law and the Registered Clubs Act 1976.

Any person should only agree to be nominated for election to the Board if that person is fully aware of his or her duties and responsibilities as a Director of the Club.

The Board will supply a copy of this Code with every nomination form in respect of an election of the Board. A nominee for Directorship of the Club will signify on the nomination form that he or she has read and understood this Code.

LEGAL ENVIRONMENT

Each Director will constantly seek to improve his or her knowledge of the legal environment in which the Club conducts its business. The range of legislation which has an impact on the performance of Directors’ duties includes laws relating to corporations, liquor and gaming, anti-discrimination, employment, taxation, environment and trade practices.

In general, because the Club is registered as a company with “limited liability”, Directors of the Club who act in good faith and with reasonable care and diligence will not be personally liable for the acts or omissions of the Club, including the acts or omissions of the Board or of an individual Director who acts on the Club’s behalf

However, in some situations (such as insolvency of the Club), Directors may be personally liable for their acts or omissions. An increasing amount of legislation now imposes “offence” provisions on an individual Director as well on as the Club as a whole.

This Code merely serves as a starting point for an individual Director to acquire additional essential knowledge through self-education and attendance at training courses and seminars. Each Director will endeavour to attend appropriate training courses and seminars as may be recommended to the Board by the Chief Executive Officer of the Club.

DUTIES OF DIRECTORS:

This section sets out the key duties of individual Directors. Other more specific duties arise in various specific situations. The Board should seek appropriate professional advice if a situation arises which is not completely addressed in this Code.

A Director’s prime duty is to the Club (ie the company). In times of financial difficulty, the Director’s prime duty to the Club will be balanced against the Director’s duty to the Club’s creditors.

A Director owes to the Club duties of honesty, care and diligence, and good faith. These duties are imposed by the Corporations Law: A breach of any of these duties may lead to a Supreme Court action against the Director.

These duties are summarised below:

The Duty to Act Honestly

A Director must at all times act honestly in the exercise of his or her powers and the discharge of his or her duties of office.

The Duties of Care and Diligence

In exercising his or her powers and in the discharge of his or her duties, a Director must exercise a degree of care and diligence that a reasonable person in a like position in the Club would exercise in the Club’s circumstances.

The Duty Not to Make Improper Use of Inside Information or Position

A Director must not make use of information acquired by virtue of his or her position as a Director to gain directly or indirectly an advantage for himself or herself or for any other person or to cause detriment to the Club.

A Director who leaks information from meetings of the Board or of Board committees is in breach of this duty. Another person may be able to gain a personal advantage from leaked information or the Club may be harmed by leaked information.

Hence, proceedings of meetings of the Board and of Board committees must be kept confidential. A Director must not reveal the proceedings of meetings of the Board or of Board committees with persons who are not Directors. For example, a Director must not disclose details of competing tenders to a friend who may also be a tenderer for providing services to the Club. To do so will be in clear breach of the Corporations Law.

A Director must not make improper use of his or her position to gain directly or indirectly an advantage for themselves or any other person or to cause detriment to the Club. For example, a Director must not use his or her position to instruct an employee of the Club to act inconsistently with the Club's responsible service of alcohol or responsible service of gambling policies.

The Duty to Prevent Insolvent Trading

A Director is under a duty to prevent the Club from trading whilst insolvent (see Section 588G of the Corporations Law).

A Director breaches this duty if the Director fails to prevent the Club incurring debts if there are reasonable grounds for suspecting that the Club may not be able to pay these debts when they fall due. This requires Directors to ensure that there are adequate reporting and supervisory systems in place which facilitate the effective monitoring of the Club's financial position.

If there is the slightest risk that the Club may have difficulty in paying any creditor then Directors should seriously consider obtaining financial, accounting and legal advice as soon as possible.

It is not sufficient for a Director to say that he or she was unaware of relevant facts, matters and circumstances relating to the business and affairs and finances of the Club. A Director is not only entitled to receive all relevant information relating to the Club's finances but if he or she is not getting that information the Director must insist on obtaining the information. Ignorance is not a defence for Directors.

The Duty to Act in Good Faith and Loyalty

A Director must exercise his or her powers in good faith in what he or she believes is in the best interests of the Club. The receipt of an incidental benefit may be grounds to challenge the good faith of a Director's decision.

The Duty to Act For a Proper Purpose

A Director must exercise his or her powers for the purpose for which those powers are expressly or impliedly conferred and not for collateral purposes. Honest behaviour by a Director does not prevent a finding of improper conduct.

The Duty to Declare Material Personal Interests (to Avoid Conflicts of Interest)

A Director must not permit a possible or actual conflict of interest to arise between a duty owed to the Club and a duty owed to another person or organisation.

Examples of a possible conflict of interest range from the most benign, where a Director is elected to a committee of an internal club, to the most apparent, where a Director has an interest in a competitive business such as a hotel or restaurant.

The only way to avoid any conflict of interest is for the Director to declare any “material personal interest” to a meeting of the Board.

A Director has a “material personal interest” if he or she has any interest (be it financial or personal, or both) in a matter that relates to the affairs of the Club. A material personal interest includes an interest in any contract which the Club has entered into, an interest in any proposed contract involving the Club, an interest as an office-holder in any other organisation, or an interest by virtue of possessing any property.

Where a Director has a material personal interest, that Director must comply with the requirements of the Corporations Law, the Registered Clubs Act and the Club’s Constitution.

A Director is required to declare any material personal interest to a meeting of the Board as soon as possible after the relevant facts come to the Director’s knowledge. (See Sections 191 and 192 of the Corporations Law and Section 39 of the Registered Clubs Act.)

A common example of a “material personal interest” which requires declaration to a meeting of the Board is when a Director is an office-holder of an internal club or an external organisation which has made or is likely to make a request to the Board for funding of its activities.

Another common example of a “material personal interest” which requires declaration to a meeting of the Board is when a Director has a financial or personal interest in a business which is supplying or may supply goods or services to the Club. In addition to declaring a material personal interest, the Director should consider whether it is appropriate to have an interest in a contract with the Club in the first place.

A Director is prohibited from voting on any matter in which that Director has a “material personal interest” and from being present at a meeting of the Board while that matter is being considered (the Corporations Law specifies some limited exceptions to this prohibition).

The Duty Not to Misuse Club Property

A Director must not misuse the Club’s property, either by direct misuse (including misuse of confidential information) or by diverting the Club’s opportunities for the Director’s benefit.

For example, a Director must not take the Club’s property without authority and then use it for the Director’s own purposes such as using the Club’s funds to purchase private property. Examples of indirect misuse of the Club’s property are less obvious and could include a situation where a Director uses the Club’s feasibility study in relation to a proposed project to enable an entity controlled by the Director to tender for the same project.

A Director must not make “secret profits”, irrespective of whether the opportunity exploited was one which was open to the Club or not or whether the Director acted honestly and in good faith.

Duties to Creditors

A Director also owes a duty to creditors not to prejudice the creditors’ interests, particularly where the Club is suffering financial instability to such a degree that its creditors’ money is at risk.

BENEFITS TO DIRECTORS

Benefits to Directors (and other members) under the Registered Clubs Act

Directors should realise that the obtaining of any benefit, reimbursement, honorarium, gift or advantage must be very carefully scrutinised, monitored and disclosed to ensure that the conduct of each Director is not only being undertaken in a scrupulously honest way but seen to be undertaken in that way.

The Registered Clubs Act imposes very strict requirements (which if not adhered to can result in complaint proceedings under the Registered Clubs Act against the Director) regarding the receipt of benefits such as out-of-pocket expenses and honoraria.

In general, an individual Director is not entitled to any benefit which is not equally available to any member of the Club who is not a Director, unless the members in General Meeting have authorised the giving of that different benefit to the Director.

Section 10(1)(i) of the Registered Clubs Act provides that Directors (and members) are not entitled under the rules of the Club or otherwise to derive directly or indirectly any profit, benefit or advantage from the Club that is not offered equally to every full member of the Club.

The exceptions to Section 10(1)(i) of the Registered Clubs Act are:

- where the member derived or became entitled to derive the benefit pursuant to a contract or agreement with the Club and the benefit was in the opinion of the Licensing Court reasonable in the circumstances of the case (Section 10(6)(a));
- an honorarium approved by the members in General Meeting (Section 10(6)(b));
- reasonable food and refreshment offered by a licensed poker machine dealer or seller in the premises of that dealer or seller or at poker machine display in New South Wales for the purposes of promoting poker machines and related products and services (Section 10(6)(c));
- reasonable out of pocket expenses incurred by the chief executive officer, an employee or a member of the Club in the course of carrying out his or her duties in relation to the Club and paid pursuant to a current resolution of the Board (Section 10(6)(d));
- under Section 10(6A)(b), the Club can provide different benefits for different classes of members if the different benefits (not being in the form of money or a cheque or a promissory note) have been approved by the members in General Meeting prior to the benefit being provided.

Loans To Directors

Directors, their spouses or the relatives of Directors or their spouses should not obtain loans from the Club. At the very least, a loan to any of these persons could be a breach of Section 10(1)(i) of the Registered Clubs Act.

Directors' Honoraria

Any payment of an honorarium to a Director in respect of his or her services to the Club as a Director must first be approved by a resolution passed at a General Meeting of the Club.

ROLE OF THE BOARD

The role of the Board is to formulate policies and to ensure that those policies are carried out by the Club's management.

A Director will not interfere with the day to day running of the Club nor interfere with employees or contractors in the performance of their duties. A Director will make all enquiries concerning employees, contractors or the operation of the Club to the Chief Executive Officer.

A Director acting alone has no authority or power unless the Board has specifically delegated a specific task, function or responsibility to that Director.

A Director can only effectively exercise power when acting in concert as the Board of Directors of the Club.

A Director will only act in the overall best interests of the Club, notwithstanding that a Director may see himself or herself being elected from a particular part of the membership having particular interests, for example, representing an internal club involved in a particular sport or social activity.

The Board will conduct the business and affairs of the Club in accordance with the Club's Constitution and in the best interests of the Club and members as a whole.

FUNCTIONS OF THE BOARD

The Board (being the Directors acting collectively) has the following fundamental duties:

- to set goals for the Club;
- to appoint the Chief Executive Officer;
- to oversee the plans of managers for the acquisition and organisation of financial and human resources towards the attainment of the Club's goals; and
- to review at reasonable intervals the progress of the Club towards achieving its goals.

The Board also has the following managerial duties which are generally delegated to managers and are to be read subject to the duties of chief executive officers as stated in the Club Managers (State) Award:

- to establish procedures designed to protect the Club's financial position and to ensure that the Club is able to meet its debts as and when these debts fall due;
- to ensure that people who have prepared reports or given advice or opinions on which the Directors or other officers or employees of the Club have relied, were honest, competent and reliable;
- to adopt an annual budget for the financial performance of the Club and ensuring that its results are regularly monitored;
- to put in place adequate measures to ensure that decisions made by individual managers and employees are adequately monitored by the Board and that those decision-makers had adequate information about the subject matter of the decisions;
- to ensure that Directors and managers have done all that can be done to avoid a conflict of their financial or other interests with the interests of the Club;
- to adopt clearly defined delegations of authority between the Board and the Chief Executive Officer;
- to put in place adequate internal controls, both operationally and financially, and to ensure that the ability to regularly monitor these controls also exists;
- to ensure that the Club's accounts meet the Australian Accounting Standards and are true and fair;
- to adopt a compliance program designed to ensure that the Club complies with the provisions of the Corporations Law, Registered Clubs Act and other legislation; and
- to review on a regular basis the Board's effectiveness, the balance of skills it contains and areas in which its composition and deliberations should be improved.

CORPORATE GOVERNANCE

The Board is responsible for the overall corporate governance of the Club. The Board will aim to achieve managerial best practice by ensuring maximum efficiency in decision-making processes and by ensuring that the legal obligations of the Club are routinely and systematically met.

The Board will put in place a set of systems to ensure that there are recognised procedures in respect of every aspect of managing the Club. For example, the Board will:

- establish committees of Directors to ensure that there are no conflicts of interest which may affect the Directors' abilities to properly discharge their duties to the Club;
- adopt compliance programs and policies dealing with environmental issues, occupational health and safety issues and equal opportunity practices; and
- put in place procedures to ensure that all areas of financial risk to which the Club is exposed are contained to acceptable levels and that the Club has effective internal financial controls.

DELIBERATIONS OF THE BOARD

To comply with all of the duties set out above, Directors will ensure that any decision required to be made at Board level must be the subject of adequate Board scrutiny. That scrutiny should be comprised of a thorough examination of the merits and disadvantages of each proposed course of action.

Where the Directors do not have the requisite degree of knowledge or experience to conduct this examination in isolation, the Board should obtain appropriate professional advice.

The final decision of the Board in any given instance should be in the form of a resolution of the Board. The resolution should be the product of a fully informed debate on all relevant issues concerning the proposal and that process should be reflected in the minutes maintained by the Board. Where a Director dissents, that dissent should be expressed and recorded in the Board minutes and considered by the other Directors in the context of their views.

PASSING RESOLUTIONS – UNITY OF DIRECTORS

The Board will follow the voting procedure for the passing of resolutions as provided in the Club's Constitution and By-laws.

Once a resolution is passed, that resolution becomes a resolution of the Board. An individual Director who may have voted against a particular resolution is bound by that resolution and will not publicly dissent or speak against the resolution.

UNDERTAKING

Each Director hereby undertakes to follow this Code in a manner which encourages the responsible behaviour of members and employees and ensures that all members and their guests can enjoy the facilities and services provided by the Club.

Each nominee for election as a Director will sign the attached Statutory Declaration (which relates to the nominee's understanding of this Code and the nominee's agreement, if elected to the Board, to comply with this Code) and return it to the Chief Executive Officer with his or her nomination form.

STATUTORY DECLARATION

I, _____

of _____

in the State of New South Wales do hereby solemnly and sincerely declare as follows:

1. I am identical with the nominee for office named in the nomination form which accompanies this declaration.
2. I acknowledge and agree that if elected, I will accept all duties and obligations of a Director of Catalina Country Club Limited (“the Club”).
3. I am not subject to Section 206B (automatic disqualification for certain prior convictions or for bankruptcy, deed of arrangement or composition with creditors), Sections 206C, 206D or 206E (Court power of disqualification) or Section 206F (Australian Securities and Investment Commission’s power of disqualification) of the Corporations Law.
4. I am not a key official or former key official as defined in the Registered Clubs Act 1976. (In the event of a nomination from a key official or former key official, the nomination cannot be accepted unless proof of an exemption under Sections 59A(8) or 59B(4) of the Registered Clubs Act is supplied.)
5. I am aware of my responsibilities under Section 180 (Director’s duties of care and diligence), Section 317 (consideration of reports at AGM) and Section 588G (Director’s duty to prevent insolvent wading by company) of the Corporations Law.
6. I am aware of my obligations under Sections 299 and 300 of the Corporations Law and the Registered Clubs Act 1976 to disclose the following in relation to the Directors’ Report:
 - (a) Qualifications: tertiary, professional bodies or associations, diplomas, certificates, degrees etc.
 - (b) Experience as outlined in areas such as:
 - (i) Business activities;
 - (ii) Other directorships;
 - (iii) Relevant business experience;
 - (iv) Other experience.
 - (c) Special responsibilities: committees of which the Director is a member, any specific functions delegated to the Director by the Board.

- 7. I must declare to a meeting of the Board any material personal interest (including a direct or indirect interest in a contract or proposed contract involving the Club, the holding of an office or an interest in property) pursuant to the Corporations Law (Sections 191 or 192) and the Registered Clubs Act (Section 39).
- 8. I confirm that I have been made aware of the requirements of Section 39 of the Registered Clubs Act which are that after any declaration of interest under the Corporations Law is made by me to the Board, particulars of this declaration must be exhibited in a conspicuous place on the premises of the Club for at least 14 days.
- 9. I am aware that under Section 195 of the Corporations Law, I must not (subject to limited exceptions) be present or vote on any matter that is being considered at a meeting of the Board or a meeting of Directors in which I have a material personal interest.
- 10. I specifically and expressly agree that I will keep confidential all business discussed and/or transacted at Board meetings of the Club. I also specifically and expressly agree that I will keep confidential all other confidential information which I become aware of or that comes into my possession or knowledge as a result of my being a Director of the Club. I have been made aware of the provisions of Section 183 of the Corporations Law concerning improper use of information and am aware that it is a serious offence to make improper use of information obtained by myself as a Director.
- 11. As a Director of the Club, I am aware of and will undertake my responsibilities under the Corporations Law, the Registered Clubs Act and the Club’s Constitution.
- 12. I understand this Code of Conduct for Directors. I agree to comply with this Code if I am elected to the Board.

Subscribed and declared at _____

on this _____ day of _____

.....
Signature of Nominee

before me

.....
Signature of Justice of the Peace *Code of Conduct for Directors – Catalina Country Club Limited*