

# Conflict of Interest Policy (BoD)

## 1 What is this policy about?

The purpose of this Conflict of Interest Policy is to **protect any of TDF's interests** against the risk that derives from **overlapping loyalties**, interfering at the **intersection of official duties and personal interests** of a *Member or Deputy Member of the Board of Directors (BoD)*.

Extending any other legal or statutory obligations, and any other rules set forth in any of TDF's *Rules of Procedure*, this policy defines how to **identify and when to act on Conflicts of Interests**.

## 2 What is a Conflict of Interest?

A *Member or Deputy Member of the Board of Directors* as well as an election candidate ("**obliged person**"), who has a **personal interest**, might have a **Conflict of Interest** with an **official duty**.

The **duty of any obliged person ("official duty")** is first and foremost to act in the **best interest and to the full advantage of TDF**, according to its **statutory goals**, as well as its **objectives and mission** stated therein; and to **avoid any material or intangible damages** to TDF, its current or planned projects, its reputation, or its community. Any personal interests or advantages have always **clearly to be subordinated** to that.

If an obliged person prefers to protect business secrets and advantages over the application of this policy they shall resign from office.

A **personal interest** is not identical to, but tends to **qualify as a Conflict of Interest** when it can **result in improper conduct**. This policy describes how to determine an **actual Conflict of Interest**. The aim is to assist in **avoiding situations** where a Conflict of Interest **could arise** and to **avoid, mitigate and deal with Conflicts** when they do.

## 3 What is a personal interest?

A personal interest of an obliged person resides in

- 1 any **activity** about, or **failure to act on**,
- 2 a **proposal**, a **vote**, a **decision**, a **contract** or a **transaction**, and
- 3 causally related to material or intangible impact on **business, employment, contracting, investment**.

A personal interest of an obliged person also resides in comparable material or intangible economic benefit for **family**. Personal interests are of economic nature, or in kind, and are **direct or indirect**, for example but not limited to:

- an **ownership or investment** in any **entity or organization** with or through which TDF **does or plans to do business with**, or
- a **compensation arrangement** with TDF or with any **entity, organization or individual** with or through which TDF **does or plans to do business**, or
- a likely **potential ownership or investment interest** in, or **compensation arrangement** with, any **entity, organization or individual** with or through which TDF **does or plans to do business**

Compensation includes **direct and indirect remuneration** as well as **gifts or undue favours** that are, according to the non-arbitrary assessment of the *Board of Directors*, **not insubstantial** for the recipient.

## 4 Consequences of a Conflict of Interest

If a Conflict of Interest exists, the **person in conflict**

1. **shall**, independently from any duty to disclose, **at a minimum always be excluded from any vote and any activity** regarding any topics or items causing or bordering with the conflict for as long as the conflict is **not certain to have vanished**. The person may participate in discussions, unless it suspended its disclosure duties (see 4.2). In accordance with § 8 of TDF's statutes, stipulating the effective handling of Conflicts of Interest, by derogation from the general rule as outlined in § 9.3 of TDF's statutes, the Board of Directors remains quorate, even if exclusions would lead to the absence of the Chairperson and the Deputy Chairperson at the same time.
2. **according to below rules has a duty to disclose**. As an exceptional procedure an obliged person may suspend their disclosure duties only if they **fully and completely** refrain from influencing a discussion, thread, topic or topical area in **all direct or indirect means, directly or via third parties**. This requires **complete and full abstention** e.g. **from any** proposal, vote, decision, contract or transaction, until the topic is **fully settled**.

## 5 Duty to disclose or other disclosure

In case of a **potential Conflict of Interest** the following **rules apply** to *obliged persons with a personal interest*.

**Below indicators** of a Conflict of Interest always **do result** in a **duty to disclose** a personal interest, notwithstanding other comparable indicators. In such situations, *obliged persons must disclose*, in **due course**, to the *Board of Directors* their knowledge of the **existence** of a personal interest **and all material facts** that **may give rise** to an actual Conflict of Interest.

Asides from disclosure by obliged persons, **anyone else** can – with a clear preference to internal reporting channels – disclose potential or perceived conflicts of interest to the Board of Directors, or one or more of its individual Members or *Deputy Members*, **at any time, in confidence or fully anonymous**. The Board of Directors has to **safeguard the anonymity** of the informant if asked for that protection, **whatever the reason** ("**protection of whistleblowers**"). Any attempt to **directly or indirectly undermine** this protection by those suspected of a Conflict of Interest will be **treated as a violation** of rules as per this policy.

### 5.1 Duty to disclose business affiliations

**Additionally**, any *obliged person* must disclose their **related business or economic affiliation(s)** that could be relevant for a personal interest, and inform the *Board of Trustees* as well as the general public in **due course**.

The duty to disclose applies **during the full term of duty**. Any *obliged person* must, in due course, **disclose any business or economic affiliation change(s)** that could be relevant for a personal interest.

## 5.2 Right to be heard

In case of a duty to disclose, or a potential violation of the exception clause in 4.2 (“Consequences of a Conflict of Interest - according to below rules has a duty to disclose”), the Board of Directors **shall offer** the obliged person an opportunity to **discuss the matter** with the Board of Directors, when a potential or – not obviously implausible – perceived Conflict of Interest has been brought to its attention. Immediately afterwards, **regardless of the assessment** by the affected *obliged person*, that person shall **refrain from attending** a *Board of Directors* meeting **during those parts where** the existence of a Conflict of Interest is **determined and voted upon**.

Unless the affected person(s) made public the matter, or unless a publication of the Conflict according to this Policy has been voted on, this falls under the exception of § 8.3c of TDF's statutes and **has to be kept confidential**.

## 5.3 Determining an actual Conflict of Interest

The remaining *Board of Directors* shall determine **if a Conflict of Interest actually exists**, before the *Board of Directors* **takes action**. The *Board of Directors* will **take into consideration** the measures to mitigate Conflicts of Interest established in the TDF statutes (i.e. § 8.4 TDF statutes).

## 5.4 What happens if the rules of disclosure are violated?

If the *Board of Directors* has reasonable cause to believe an *obliged person* under this policy **may** have **unduly failed to disclose a conflict of interest**, it shall **inform** the person about the basis for such cause and set the person a **reasonable deadline to explain** the alleged failure to disclose.

Following the deadline and **possible investigations**, the *Board of Directors* **will determine if the person has an actual Conflict of Interest, has unduly failed disclosure, if the conflict of interest still exists, and then make it transparent to other TDF bodies** and, if appropriate (for example § 8.3c of TDF's statutes), **to the general public**.

The Board of Directors shall take **further adequate disciplinary and corrective action**, based on non-arbitrary assessment, **among which** it may:

- apply the rules of this policy by **treating the obliged person as conflicted hereafter**
- issue a **policy warning** to the *obliged person*
- **make public** that policy warning
- **list in public or in private the votes and decisions** of the *Board of Directors* **possibly affected** by the now disclosed Conflict of Interest
- **make public the Conflict of Interest** through explicit publication (see § 8.3d of the statutes)
- **actively prevent Conflicts of Interest** within the foundation and regarding the person (see § 8.4 of the statutes)

## 6 Indicators of a Conflict of Interest

The Board of Directors will determine if the person has an actual Conflict of Interest, when a potential conflict of interest is identified, typically after the disclosure of an obliged person with a personal interest. Among the indicators of a Conflict of Interest is any behaviour that is:

1. opposed to what can reasonably be **expected from anybody who has indicated** their intention to participate actively in the **fulfilment of the foundation's goals** (also from an applicant to the *Board of Trustees*). See for example § 10.1d of the statutes.
2. contrary to this policy, **treating as confidential or holding back any information that documents overlapping loyalties** in case of an obliged person's conflict, if the obliged person supports an interest conflicting with TDF's goals (see § 8.3c TDF statutes)
3. **hindering or misguiding the knowledge** by a *Member* of TDF's bodies or a statutory committee, e.g. *Engineering Steering Committee, Certification Committee, Tender Committee, Election Committee or Trademark Committee, the Advisory Board* as well as groups that have been delegated responsibility as per *the Rules of Procedure* (see § 8.3 d TDF statutes) **about a relevant fact for TDF's goals**, contrary to what can reasonably be expected to be revealed by an applicant to the *Board of Trustees* (see § 10.1 d TDF statutes)
4. **predominantly favourable to a third party's business opportunity**, which instead the foundation in light of its **statutory goals** legally tends to pursue (see § 10.1 TDF statutes)
5. **voting favourably** for establishing, updating or changing **policies** (e.g. trademark, grants or travels, conflict of interest, code of conduct, certification, tender), **by-laws, rules of procedures and statutes**, or to this effect determining or trying to determine the voting behaviour of a *Member, Deputy or Substitute Member* of the *Board of Trustees*, the *Board of Directors* or the *Membership Committee*, who is only subject to its personal conscience (see § 11.2 TDF statutes), when the vote interferes with an official duty, e.g. by being predominantly
  - either **favourable to business, investment, financial or economic opportunity** of oneself, the employer or a contracting party
  - or **unfavourable** to business, investment, financial or economic opportunity of **competitors**
6. **predominantly in the interest of a third party**, whose interests directly **conflict** with at least one of the foundation's goals
7. determining or trying to **determine the voting behaviour** of a *Member, Deputy or Substitute Member* of the *Board of Trustees*, the *Board of Directors* or the *Membership Committee*, who is only subject to its personal conscience (for example in case of elections), (see § 11.2 TDF statutes)
8. **enticing away a future or present employee, contractor or contributor** of the TDF to the obliged person's company or an affiliated company in consciousness of **deviating TDF's planning**
9. **making public statements** giving the appearance to be made on behalf of the *Board of Directors*, in contrast to **behaviour that can reasonably be expected** from an applicant to or *Member* of the *Board of Trustees* (see § 10.1 d TDF statutes)
10. **hindering engagement in the fulfilment of TDF's goals**,

- especially, but not only, by hindering employees of a firm, organization or entity to gain membership access to TDF's bodies if they show the intention to participate actively in the fulfilment of the foundation's goals, (§ 10.1 d TDF statutes)
  - **even more if that behaviour is shown** by anybody active for a firm, organization or entity or one of its affiliate organizations, whose employees or affiliates have been **limited to a third of the members of that TDF body or have been expelled from that body** (§ 8.4 TDF statutes)
11. **subject to a complaint by the Members** of the *Board of Trustees*, concerning an assumed Conflict of Interest (see § 11.3 TDF statutes)
12. **voting favourably**
- on the conclusion of a transaction with oneself,
  - or the initiation or settlement of a legal dispute between oneself and the foundation,
  - or use of donations from the resources of the foundation – no matter if time, money, assets or other resources – to the obliged person or a legal entity, in which the *obliged person* holds a position on the board or another body (see § 9.6 TDF statutes)

## **7 Records of proceedings and procedural details**

Any changes of this policy, be they minor or major, be they formal, procedural or affect the content, must follow the rules in § 8.3 of the statutes.