

FINANCIAL ASSOCIATION BETWEEN DIRECTORS POLICY
CANADIAN INTERNET REGISTRATION AUTHORITY /
AUTORITÉ CANADIENNE POUR LES ENREGISTREMENTS INTERNET
(the “Corporation”)

(Revised by the Board on October 3, 2005)

A. Governing Principles

1. No two Directors may have the same employer directly or indirectly through common corporate ownership or otherwise or be financially associated, for example, by similar sources of material employment income or material consulting income. The decisions of the board of directors of the Corporation (the “Board”) from time to time on these matters shall be final and binding. Each Director must on an ongoing basis make disclosure to the Corporation if any change should occur in his employment or financial association that would cause the Director to have the same employer or be financially associated with another Director of the Corporation as described herein. The Board may adopt such other policies or prescribe such other rules and regulations not inconsistent with the provisions of the Corporation’s By-laws or the *Canada Corporations Act* relating to conflicts of interest.
2. The purposes of Section 1 above are:
 - a. to minimize opportunities for Directors, acting in concert, to put the interests of any person or entity ahead of those of CIRA; and
 - b. to ensure that the composition of the Board reflects the broad constituency of Canadians served by CIRA rather than any particular interest group.
3. The first purpose of Section 1 above relates to Directors’ fiduciary duty to act honestly and in good faith with a view to the best interests of CIRA.
4. The second purpose of Section 1 above has a different emphasis from that of Directors’ fiduciary duty. It is to ensure that the composition of the Board reflects the broad mandate of CIRA to operate an efficient and cost-effective domain name registry for all Canadians, and not just in the interest of a particular Registrar, Registrant, or any other person or group.
5. It is important to remember that Section 1 above does not exhaust the scope of Directors’ fiduciary duty including the duty to avoid conflicts of interest. The prevention of financial association between Directors does not replace or fulfil Directors’ duty to comply with CIRA’s policy on conflicts of interest. Even where the composition of the Board ensures that Directors are financially independent from each other and represent a broad range of constituency interests, each

Director remains subject to a fiduciary duty to act honestly and in good faith with a view to the best interests of CIRA.

B. Common Employment

6. Section 1 specifically prohibits two Directors from having the same employer directly or indirectly whether through common corporate ownership or otherwise.
7. The purpose of Section 1 is to prevent an alignment of financial interest between two Directors, each of whom potentially is subject to control or influence by a common employer or by employers which are subject to common control. Examples of the application of Section 1 would include:
 - a. Director A and Director B are both employees of Employer A (i.e., corporation, partnership, club, individual or other incorporated or unincorporated employer).
 - b. Director A is an employee of Corporation A. Director B is an employee of Corporation B. Corporation B is a subsidiary of Corporation A.
 - c. Director A is an employee of Corporation A. Director B is an employee of Corporation B. Corporation A and Corporation B are affiliates because both are subsidiaries of Corporation C.
 - d. Director A is an employee of Corporation A. Director C is an employee of Corporation C. Corporation C is the “grandchild” of Corporation A because Corporation C is the subsidiary of Corporation B which is the subsidiary of Corporation A.
 - e. Director A is an employee of Partnership A. Director B is an employee of Limited Partnership B. Partnership A is the General Partner which manages Limited Partnership B.

C. Financial Association

8. Section 1 also prohibits Directors from being “financially associated” with each other.
9. Section 1 does not define “financial association”. However, it gives two examples of such financial association: having similar sources of material employment income or material consulting income.
 - a. The term “similar” is not defined by Section 1. In each circumstance, the Board must determine whether the Directors’ sources of income are related to such an extent that they result in potential control, influence or alignment of financial interest between the Directors.

- b. The term “material” is not defined by Section 1. In each circumstance, the Board must determine whether the Directors’ sources of employment or consultancy income are significant to such an extent that they result in potential control, influence or alignment of financial interest between the Directors. In the absence of evidence to the contrary, the Board is entitled to assume materiality where a single source of income (or related sources of income such as from a group of affiliated entities) represents at least 10% of a Director’s total income.
10. Examples of similar sources of material income would include:
- a. Director A is an employee of Business A. Director B is a consultant to Business A who derives a material source of her income from Business A.
 - b. Director A and Director B are both consultants to Business A. Both Directors derive a material source of their respective incomes from Business A.
 - c. Director A is an employee of Corporation A. Director B is a consultant to Corporation B who derives a material source of his income from Corporation B. Corporation B is the subsidiary, grandchild, or other affiliate of Corporation A.
 - d. Director A is a consultant to Partnership A who derives a material source of his income from Partnership A. Director B is a consultant to Limited Partnership B who derives a material source of her income from Limited Partnership B. Partnership A is the General Partner which manages Limited Partnership B.
 - e. Director A is a consultant to Client A who derives a material source of her income from Client A. Director B is a consultant to Person B who derives a material source of his income from Client B. The consultancies relate to a joint venture in which Client A and Client B are joint venture partners.
11. Sources of employment or consultancy income illustrate prohibited financial associations between Directors under Section 1. They are not exhaustive. Where a financial association does not fall within these examples, the Board should have regard for the plain meaning of the words and the purpose of the Policy:
- a. there must be an “association” between Directors, namely a potential community or alignment of financial interest between the Directors caused by financial control, influence or commonality of interest;
 - b. the association must be of a “financial” nature; and

- c. the association must be “material”, which may include a consideration both of monetary amount or proportion of the financial association involved and its relevance to CIRA.
12. Examples of prohibited financial associations might include:
- a. a relationship involving financial dependency between Directors which may, but would not necessarily, include a spousal, parent-child or other close personal relationship between the Directors;
 - b. a material investment relationship such as where:
 - i) Director A holds a material investment in Business A, either because Director A’s investment consists of at least 10% of Business A’s equity or because Director A’s investment consists of at least 10% of Director A’s assets. Director B is an employee or consultant of Business A who derives a material source of her income from Business A; or
 - ii) both Director A and Director B hold material investments in Business A. Each investment consists of at least 10% of Business A’s equity or at least 10% of each of Director A’s and Director B’s assets; or
 - c. a material contract between Director A and Director B which results in an alignment of their financial interests. Such a contract might include, for example, a consultancy, employment, business partnership or other financial relationship. It would not, however, include an arm’s-length commercial relationship (such as supplier-consumer, service provider-customer, vendor-purchaser) unless the Board determines that, in all the circumstances, the contract could reasonably be anticipated to result in the Directors having financially aligned interests with respect to CIRA policies, rules or other decisions.

It is impossible to list all the situations which may involve a financial association between Directors. The Board must have the flexibility, on a case-by-case basis, to determine whether a particular financial association is prohibited by Section 1.

D. Removal upon Financial Association

- 13 If two or more Directors are in financial association in accordance with this Policy, then such Directors shall first be given the opportunity to decide amongst themselves which of such Directors will resign. If one of such Directors does not resign: (i) within ten (10) days of the date that disclosure of the financial association is made to the Corporation in accordance with this Policy; or (ii) within the period before the next Board meeting following the date that disclosure

is made, whichever period is shorter, then the Board shall, and shall have the authority to, remove the following Director(s) (and the Directors in financial association shall not vote on the matter):

- a. if two or more Directors are elected at the same time and are in financial association, the Director(s) elected with the fewer number of votes;
- b. if a newly elected Director is in financial association with an existing Director, the new Director;
- c. if two or more existing Directors come into financial association during their term of office:
 - (A) the Director(s) whose status change resulted in the financial association;
 - (B) the Director(s) most recently elected;
 - (C) the Director(s) with the shortest term left to serve as Director; or
 - (D) if applicable, the Director(s) elected with the fewest number of votes;

whichever of paragraphs (A), (B), (C) or (D) is first applicable in the order set out above.

14. If the Director(s) to be removed cannot be determined under subsections 13 a., b. or c. above, the Board shall call a meeting of Members at which the Members shall elect from the Directors in financial association the Director to remain in office and remove the other Director(s) by resolution approved by a majority of the Members present at the meeting of Members for which notice specifying the intention to pass such resolution was given.