

NIRA DIRECTORS' CODE OF CONDUCT AND POLICY ON CONFLICTS OF INTEREST

Version 1.0, May 5, 2008

NIGERIAN INTERNET REGISTRATION ASSOCIATION
(the "Association")

SECTION 1 **GENERAL**

1.1 Application. This Directors' Code of Conduct and Policy on Conflicts of Interest (the "Code") has been approved by the board of directors (the "Board") of the Association. The Code is intended to govern the conduct of Directors of the Association. It also sets out guidelines for avoiding and disclosing conflicts of interest.

1.2 Definitions. Unless otherwise specified, the words and expressions used in this Code shall have the same meaning as in the Constitution of the Association.

1.3 Complement to Constitutions, etc. The provisions of this Code are intended to complement and enhance in a consistent manner, the requirements that arise at law and in the Constitutions of the Association.

1.4 Interpretation. This Code shall be, unless the context otherwise requires, construed and interpreted in accordance with the interpretation provisions of the Association's Constitutions.

SECTION 2 **DUTIES AND RESPONSIBILITIES OF INDIVIDUAL DIRECTORS**

2.1 Responsibilities. Each Director is expected to become an active participant in a board that functions effectively as a whole. A Directors' responsibilities are:

- (a) Be informed of the constating documents and legislation under which the Association exists, its Constitutions, mission, values, codes of conduct, and policies as they pertain to the duties of a Director;
- (b) Be generally informed about the activities of the Association and the local Internet community, and general trends in the sector(s) in which it operates;
- (c) Attend Board meetings regularly, serve on committees of the Board and contribute from personal, professional and life experience to the work of the Board;
- (d) Exercise, in the performance of their duties, the degree of care, diligence and skill required of a Director pursuant to the laws under which the Association is incorporated;
- (e) Be independent and impartial;
- (f) Not be influenced by self-interest, outside pressure, expectation of reward or fear of criticism;
- (g) Act with honesty and integrity and conduct his/herself in a manner consistent with the nature and the responsibilities and the maintenance of public confidence in the conduct of the Board's business;
- (h) Offer his/her personal perspectives and opinions on issues that are the subject of Board discussion and decision;
- (i) Voice, clearly and explicitly at the time a decision is being taken, any opposition to a decision being considered by the Board;

- (j) Maintain solidarity with fellow Directors in support of a decision that has been made in good faith in a legally constituted meeting, by Directors in reasonably full possession of the facts;
- (k) Ask the Directors to review a decision, if he/she has reasonable grounds to believe that the Board has acted without full information or in a manner inconsistent with its fiduciary obligations, and, if still not satisfied after such review, ask that the matter be placed before the membership;
- (l) Work with the staff of the Association on committees or task forces of the Board;
- (m) Know and respect the distinction in the roles of Board and staff consistent with the principles underlying these governance policies;
- (n) Exercise vigilance for and declare any apparent or real personal conflict of interest in accordance with the Association's Constitutions and policies, and in particular with this Code; and
- (o) Comply with all other codes and policies approved by the Board from time to time.

2.2 Conduct of Directors. A Director will at all times conduct his/herself in a manner that:

- (a) Supports the objectives of the Association;
- (b) Serves the overall best interests of the Association;
- (c) Subordinates his/her personal interests, and those of any particular constituency, to the best interests of the Association;
- (d) Brings credibility and goodwill to the Association;
- (e) Respects principles of fair play and due process;
- (f) Demonstrates respect for individuals and human rights;
- (g) Respects and gives fair consideration to diverse and opposing viewpoints;
- (h) Demonstrates due diligence and dedication in preparation for, and attendance at, meetings, special events and in all other activities on behalf of the Association;
- (i) Demonstrates good faith, prudent judgment, honesty, transparency and openness in his/her activities on behalf of the Association;
- (j) Ensures that the financial affairs of the Association are conducted in a responsible and transparent manner with due regard for his/her fiduciary responsibilities and public trusteeship;
- (k) Avoids real or perceived conflicts of interest;
- (l) Conforms with the Constitution and policies approved by the Board, in particular this Code and the Oath of Office and Confidentiality Agreement.

SECTION 3

CONFLICT OF INTEREST GUIDELINES

3.1 Integrity.

This Conflict of Interest Guidelines are intended to ensure the highest standards and maintenance of the integrity of the Board. Directors shall act at all times in the best interests of the Association rather than in the interests of particular constituencies. This means putting the interests of the Association ahead of any personal interest or the interest of any other person or entity. It also means performing his/her duties and transacting the affairs of the Association in such a manner that promotes public confidence and trust in the integrity, objectivity and impartiality of the Board.

3.2 No Pecuniary Benefit.

- (a) No Director shall directly or indirectly receive any profit from his/her position as such, provided that, notwithstanding anything herein contained to the contrary, Directors may receive reasonable payment for their services and reimbursement for reasonable expenses incurred by them in the performance of their duties as permitted in the Constitutions and approved by the Board.
- (b) The pecuniary interests of immediate family members (including the immediate family members of a Director's partner) or close personal or business associates of a Director are considered to also be the pecuniary interests of the Director.

3.3 Definition of Conflict of Interest.

- (a) A conflict of interest refers to situations in which personal, occupational or financial considerations may affect, or appear to affect, a Director's objectivity, judgment or ability to act in the best interests of the Association and includes conflicts as described in subsection 3.4 hereof.
- (b) A conflict of interest may be real, potential or perceived in nature.
- (c) A real conflict of interest arises where a Director has a private or personal interest, for example, a close family connection or financial interest.
- (d) A potential conflict of interest may arise when a Director has a private or personal interest such as an identified future commitment.
- (e) A perceived or apparent conflict of interest may exist when a reasonable, well informed person has a reasonable belief that a Director has a conflict of interest, even if there is no real conflict.
- (f) Full disclosure, in itself, does not remove a conflict of interest.

3.4 Examples of Conflict of Interest on the Part of a Director.

The following examples constitute Conflicts of Interest under this Code:

- (a) Any circumstance that may result in a personal or financial benefit to a Director or his/her family, business associate or friend. This includes, but is not limited to, accepting any payment for services rendered to the Association other than payment for services of a Director as permitted in this Code, including contracted work or honoraria; or accessing financial or other resources for personal use, i.e. transportation, training costs, supplies, equipment, etc.
- (b) Personal interests which conflict with the interests of Members of the Association or are otherwise adverse to the interests of the Association.

- (c) Seeking, accepting or receiving any personal benefit from a supplier, vendor or any individual or organization doing or seeking business with the Association.
- (d) Being a member of the board or staff of another Person which might have material interests that conflict with the interests of the Association or its Members; and, dealing with matters on one board, which might materially affect the other board.
- (e) Any involvement in the hiring, supervision, grievance, evaluation, promotion, remuneration or firing of a family member, business associate, or friend of the Director.

3.5 Principles for Dealing with Conflict of Interest.

- (a) Both prior to serving on the Board and during their term of office, Directors must openly disclose a potential, real or perceived conflict of interest as soon as the issue arises and before the Board or its committees dealing with the matter at issue.
- (b) If the Director is not certain whether he/she is in a conflict of interest position, the matter may be brought before the Chair of the Board or the Board for advice and guidance.
- (c) If there is any question or doubt about the existence of a real or perceived conflict, the Board will determine by majority vote if a conflict exists. The Director potentially in conflict of interest shall abstain from the discussion and shall not vote on the issue.
- (d) It is the responsibility of other Directors who are aware of a real, potential or perceived conflict of interest on the part of a fellow Director to raise the issue for clarification, first with the Director in question and, if still unresolved, with the Chair of the Board.
- (e) The Director must abstain from participation in any discussion on the matter, shall not attempt to personally influence the outcome, shall refrain from voting on the matter and, unless otherwise decided by the Board, must leave the meeting room for the duration of any such discussion or vote.
- (f) The disclosure and decision as to whether a conflict exists shall be duly recorded in the minutes of the meeting. The time the Director left and returned to the meeting shall also be recorded.

3.6 Gifts and Hospitality.

Directors shall not directly or indirectly offer or accept cash payments, gifts, gratuities, privileges or other personal rewards, which are intended to influence the activities or affairs of the Association. Directors may, however, give or receive modest gifts or hospitality as a matter of general and accepted business practice, provided the foregoing does not include cash or other negotiable instruments and provided further proper accounting of any such expenses is made.

3.7 Complaints and Disputes Involving Directors.

- (a) A Board Committee, in a meeting duly called for the purpose, shall review any complaints that a Director has violated any provision of the Association's Constitution, or policies approved by the Board, in particular, this Code and its Oath of Office and Confidentiality Agreement.
- (b) The Board Committee shall similarly review disputes between Directors that interfere with the ability of the Board to carry on its affairs.
- (c) Complaints of a grave nature may be referred to an independent arbiter.

- (d) Allegations of illegal activity shall be immediately referred to appropriate authorities for investigation. Any Director against whom such allegations are made shall take a leave of absence from the Board pending completion of the investigation.
- (e) The review of such complaints or disputes shall include an opportunity for the Director concerned to present his/her position. Board Committee members who originate or are the subject of such complaints or disputes must declare their conflict and recuse themselves from such meetings (but shall nonetheless be counted as part of the quorum).
- (f) Every attempt should be made to resolve such matters expeditiously and fairly.
- (g) The recommendations regarding resolution of such matters shall be brought to the Board for approval.
- (h) The ruling of the Board shall be final. If the Director refuses to abide by the ruling, the Board may table the matter pending determination of disciplinary action. Such action may include formal or informal censure by the Chair or the Board, suspension, a request for the Director's resignation or a resolution removing the person as a Director.

SECTION 4

CONFIDENTIALITY

4.1 Confidential Information.

It is the responsibility of Directors to know what information is confidential and to obtain clarification when in doubt. Except as he/she may be compelled by applicable legal process, a Director must, both while having and after ceasing to have that status, treat as confidential all information regarding the policies, internal operations, systems, business or affairs of the Association obtained by reason of his/her status as a Director and not generally available to the public. A Director shall not use information obtained as a result of his/her involvement on the Board for his/her personal benefit. Each Director shall avoid activities, which may create appearances that he/she has benefited from confidential information received during the course of his/her duties as a Director.

4.2 Review of Code.

Each Director, forthwith after being elected, shall meet with the Association's in-house legal counsel or, in his/her absence, with the CEO or designated NIRA staff, to review this Code and such other policies of the Association that apply to Directors.

4.3 Oath of Office and Confidentiality Agreement.

Each Director is required to sign and agree to comply with the *Oath of Office and Confidentiality Agreement*, in the form attached hereto as Schedule "A".

SECTION 5

FINANCIAL ASSOCIATION BETWEEN DIRECTORS

5.1 Governing Principles

5.1.1. 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 Association (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 Association if any change should occur in his/her employment or financial association that would cause the Director to have the same employer or be financially associated with

another Director of the Association as described herein. The Board may adopt such other policies or prescribe such other rules and regulations not inconsistent with the provisions of the Association's Constitutions or the *Nigeria Associations Act* relating to conflicts of interest.

5.1.2. The purposes of Section 5.1.1 above are:

- a. to minimize opportunities for Directors, acting in concert, to put the interests of any person or entity ahead of those of NIRA; and
- b. to ensure that the composition of the Board reflects the broad constituency of Nigerians served by NIRA rather than any particular interest group.

5.1.3. The first purpose of Section 5.1.1 above relates to Directors' fiduciary duty to act honestly and in good faith with a view to the best interests of NIRA.

5.1.4. The second purpose of Section 5.1.11 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 NIRA to operate an efficient and cost-effective domain name registry for all Nigerians, and not just in the interest of a particular Registrar, Registrant, or any other person or group.

5.1.5. It is important to remember that Section 5.1.1 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 fulfill Directors' duty to comply with NIRA'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 NIRA.

5.2 Common Employment

5.2.1 Section 5.1.1 specifically prohibits two Directors from having the same employer directly or indirectly whether through common corporate ownership or otherwise.

5.2.2 The purpose of Section 5.1.1 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 5.1.1 would include:

- a. Director A and Director B are both employees of Employer A (i.e., Association, partnership, club, individual or other incorporated or unincorporated employer).
- b. Director A is an employee of Association A. Director B is an employee of Association B. Association B is a subsidiary of Association A.
- c. Director A is an employee of Association A. Director B is an employee of Association B. Association A and Association B are affiliates because both are subsidiaries of Association C.
- d. Director A is an employee of Association A. Director C is an employee of Association C. Association C is the "grandchild" of Association A because Association C is the subsidiary of Association B which is the subsidiary of Association 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.

5.3 Financial Association

5.3.1. Section 5.1.1 also prohibits Directors from being “financially associated” with each other.

5.3.2 Section 5.1.1 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 5.1.1. 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 5.1.1. 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.

5.3.3 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 his/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 Association A. Director B is a consultant to Association B who derives a material source of his/her income from Association B. Association B is the subsidiary, grandchild, or other affiliate of Association A.
- d. Director A is a consultant to Partnership A who derives a material source of his/her income from Partnership A. Director B is a consultant to Limited Partnership B who derives a material source of his/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 his/her income from Client A. Director B is a consultant to Person B who derives a material source of his/her income from Client B. The consultancies relate to a joint venture in which Client A and Client B are joint venture partners.

5.3.4 Sources of employment or consultancy income illustrate prohibited financial associations between Directors under Section 5.1.1. 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 NIRA.

5.3.5 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 his/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 NIRA 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 5.1.1.

5.4 Removal upon Financial Association

5.4.1 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:

- (a) within ten (10) days of the date that disclosure of the financial association is made to the Association in accordance with this Policy; or
- (b) 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.

5.4.2 If the Director(s) to be removed cannot be determined under subsections 5.4.1 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.

Schedule “A”

Oath of Office and Confidentiality Agreement

I, _____, a Director of **NIGERIAN INTERNET REGISTRATION ASSOCIATION**, declare that I have read, understood and agree to comply with the Association’s Code of Conduct, Policy on Conflicts of Interest and other applicable policies, and that in carrying out my duties as a Director, I will:

1. Exercise the powers of my office and fulfill my responsibilities honestly, in good faith and in the best interests of the Association.
2. Exercise these responsibilities, at all times, with due diligence, care and skill in a reasonable and prudent manner.
3. Respect and support the Association’s Constitutions, policies, Code of Conduct, Policy on Conflicts of Interest and decisions of the Board of Directors and Membership.
4. Keep confidential all information unless the Board of Directors determines that such information is public. This shall include, but not be limited to, information about personnel, trade secrets, any personal information, and matters dealt with during *incamera* meetings of the Board of Directors.
5. Conduct myself in a spirit of collegiality and respect for the collective decisions of the Board of Directors and subordinate my personal interests to the best interests of the Association.
6. Immediately declare any personal conflict of interest that may come to my attention.
7. Immediately resign my position as a Director of the Association in the event that I, or my colleagues on the Board of Directors, have concluded that I have breached this *Oath of Office*.

Signature: _____ Date: _____

Witness: _____ Date: _____