

Board Protocols – Related Party Transactions

3P Learning Limited

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Board Protocols

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Related Party Transactions

1 Purpose

1.1 In-line with the Board Charter, directors must at all times act in accordance with legal and statutory requirements, and discharge all their duties as directors.

In doing so directors must:

- discharge their duties in good faith and in the best interests of the Company and for a proper purpose;
- act with care and diligence, demonstrate commercial reasonableness in their decision making and act with the level of skill and care expected of a director of a major company, including applying an independent and enquiring mind to their responsibilities;
- avoid conflicts of interest except in those circumstances permitted by the Corporations Act 2001 (Cwth) (“**Corporations Act**”);
- note make improper use of information gained through their position as a director;
- not take improper advantage of their position as a director;
- notify other directors of a material personal interest when a conflict arises;
- make reasonable enquiries if relying on information or advice provided by others;
- undertake any necessary inquiries in respect of delegates;
- give the Company or ASX Limited all the information required by the Corporations Act; and
- not permit the Company to engage in insolvent trading.

1.2 The Corporations Act imposes significant obligations on the Boards of companies and their directors in relation to related party transactions.

1.3 Together with the provisions about directors' duties, the Corporations Act includes specific provisions to protect and help manage the risks of related party transactions, including:

- provisions which exclude directors of public companies with material personal interests in certain matters attending director meetings about, or voting on, these matters; and
- provisions which require public companies to obtain shareholder approval to provide a financial benefit to a related party, subject to certain exceptions.

1.4 This protocol provides guidance to the Board on the application of the Corporations Act, ASX Listing Rules and the Corporate Governance Principles and Recommendations¹ in relation to dealing with related party transactions and

¹ ASX Corporate Governance Council, Corporate Governance Principles and Recommendations, 3rd edition, March 2014 (“**Corporate Governance Principles and Recommendations**”).

potential conflicts of interest, including meeting processes to be followed, what information to include in meeting materials and approval protocols.

Reference is also made to the ASIC Regulatory Guide 76: *Related Party Transactions*, March 2011, which provides comprehensive guidance on disclosure and governance principles for related party transactions.

- 1.5 Oversight of the implementation and compliance with this Protocol has been delegated by the Board to the Audit and Risk Committee.

2 Related Party Transactions

- 2.1 A 'related party transaction' is any transaction through which the Company provides a financial benefit to a related party (such as a director, their spouse and certain other relatives). Almost by definition, related party transactions involve conflicts of interest because related parties are often in a position to influence the decision of whether the benefit is provided to them and the terms of the provision of the benefit.

- 2.2 The Corporations Act provides a specific definition of a related party, being:

- an entity that controls the Company;
- a director of the Company;
- a director of an entity that controls the Company;
- a spouse, parent or child of either, a director of the Company, or a director of an entity that controls the Company; or
- an entity controlled by a related party of one of the above.

- 2.3 As stated above, under the Corporations Act, related party transactions can potentially arise from relationships between the Company and entities which control the Company.

A related issue facing the Company is that under ASX Listing Rule 10.1 the Company must not, without shareholder approval, acquire a substantial asset from, or dispose of a substantial asset to, a person or entity with a 'relevant interest' in at least 10% of the total votes attached to the voting securities in the Company.

Examples of transaction to which ASX Listing Rule 10.1 would apply would be a sale of a Company asset to a shareholder in the Company, or purchase by the Company of an asset from a shareholder, in each case who has a relevant interest in at least 10% of the issued voting shares in the Company and where the value of that asset is equal to 5% or more of the equity interests as set out in the Company's latest accounts.

- 2.4 The Corporate Governance Principles and Recommendations note the following factors which are relevant to assessing the 'independence' of a director:

- is, or has been, employed in an executive capacity by the entity or any of its child entities and there has not been a period of at least three years between ceasing such employment and serving on the board;
- is, or has within the last three years been, a partner, director or senior employee of a provider of material professional services to the entity or any of its child entities;

- is, or has been within the last three years, in a material business relationship (eg as a supplier or customer) with the entity or any of its child entities, or an officer of, or otherwise associated with, someone with such a relationship;
- is a substantial security holder of the entity or an officer of, or otherwise associated with, a substantial security holder of the entity;
- has a material contractual relationship with the entity or its child entities other than as a director;
- has close family ties with any person who falls within any of the categories described above; or
- has been a director of the entity for such a period that his or her independence may have been compromised.²

Therefore, whether a director is independent will affect the composition of the Board and its committees, and imposes additional obligations on directors to disclose matters affecting a director's independence.

- 2.5 Directors must avoid situations in which there is a 'real and substantial' conflict between the director's interests and the Company's interests.³ However, a director will not necessarily breach the rule against conflicts of interest merely because they are also a director of a company that competes with the Company.
- 2.6 Where a director has a material personal interest in a matter that is being considered at a Board meeting, that director shall excuse themselves from voting on Board matters or receiving certain information relating to that matter if that director determines that their interest in the transaction cannot be reconciled with the best interests of the Company and the directors who do not have a material personal interest in the matter have not passed a resolution that:
- identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the Company; and
 - states that those directors are satisfied that the interest should not disqualify the director from voting or being present.
- 2.7 In addition, a director of the Company must not disclose any confidential information it receives from the Company to anyone (whether a competitor of the Company or not).

3 Related Party Transaction Protocols

Related party transactions

- 3.1 It is the responsibility of each director to fully disclose on a timely basis to the Board details of any existing or potential related party interests.

Related party interests would include, for example, the following in relation to the Company or a related party:

- substantial shareholdings;
- director appointments or key management positions;

² See Box 2.3 of the Corporate Governance Principles and Recommendations.

³ See ASIC RG 76 at 76.36.

- material contractual relationships;
 - material customer or supplier agreements; and
 - material business dealings.
- 3.2 The Company Secretary will maintain a register recording all related party interests, issues and actions for each director whether or not those items have been disclosed by the director.
- 3.3 Directors will be required to routinely review and confirm that their relevant details maintained in the register are factual, complete and up-to-date.
- 3.4 To assist the Company Secretary in this role and to better assist the Company to deal with any potential related party transactions, the Board will consider:
- a structured process for Board review of matters for which a related party has a vested interest; and
 - as part of all management recommendations and positions put to the Board, requiring management to include an explicit set of arguments as to why these are in the interests of all shareholders.
- 3.5 It is the responsibility of each director to fully disclose on a timely basis to the Board details of any potential related party transaction arising as a result of the director's related party interest, including, without limitation, any potentially adverse information.
- 3.6 A director with a material personal interest in a related party transaction should not attend that part of a Board meeting (including any relevant Committee meeting) while the related party matter is being considered, unless approved by all attending "non-interested directors" (as defined in paragraph 3.10 below).
- 3.7 A director with a material personal interest in a related party transaction should not receive documentation or papers specific to the related party transaction which are distributed to directors for their consideration, unless approved by all attending "non-interested directors".
- 3.8 A director with a material personal interest in a related party transaction should not vote on a related part transaction, unless approved by all attending "non-interested directors".
- 3.9 A director with a material personal interest in a related party transaction should not lead or participate in negotiations, or sign any documentation, on behalf of either the Company or on behalf of the related party, with respect to the related party transaction, unless otherwise approved by the "non-interested directors".

The role of "non-interested directors"

- 3.10 "Non-interested directors" are those directors who do not have a material personal interest, or another form of conflict of interest, in respect of a matter being approved by the Board.
- 3.11 When making decisions to provide financial benefits to a related party, non-interested directors should:
- (a) make appropriate inquiries of management and seek appropriate advice, to the extent necessary, about the proposal;
 - (b) independently assess the information provided to them; and

- (c) exercise ‘special vigilance’ with ‘scrupulous concern’ to ensure the necessary corporate approvals are obtained.⁴

Approved and adopted by the Board of 3P Learning Limited on 16 December 2014.

⁴ See ASIC RG 76 at 76.57-76.58.