



CATALINA

CLUB

CODE OF CONDUCT FOR DIRECTORS 2020

CATALINA COUNTRY CLUB LTD

Introduction

The Board of Directors of the Club (the “Board”) undertakes to support and apply this Code of Conduct for Directors (the “Code”) in order to encourage responsible behaviour by both Directors and Management.

Those who become a Director of the Club must accept the responsibilities of reasonable care, honesty, impartiality, confidentiality and loyalty. They must act collectively to manage the business and affairs of the Club. They must also realise that the standards of responsibility are no different from those expected from a Director of any other type of company. This Code supplements and is subservient to the Club’s Constitution and By-laws.

Each nominee for election to the Board must sign a Statutory Declaration to the effect that he or she is aware of their responsibilities as a Director under the Corporations Law 2001, the Registered Clubs Act, and any other relevant statute.

A member should only agree to be nominated for election to the Board if they are fully aware of their duties and responsibilities as a Director of the Club. A copy of this Code will be attached to the nomination form for Board elections. Nominees for Directorship of the Club will vouch on the nomination form that they have read and understood this Code.

Legal Environment

Directors must seek to improve their knowledge of the legal environment in which the Club conducts its business. The range of legislation which affects the performance of their duties includes laws about corporations, liquor and gaming, discrimination, employment, taxation, trade practices, and the environment.

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 as on the Club as a whole.

This Code 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 Secretary of the Club.

Director's Duties

This section sets out the key duties of individual Directors. The Board should seek appropriate professional advice if a situation arises which is not adequately addressed in this Code. A Director's prime duty is to the Club (i.e. 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 result in an action against the Director in the Supreme Court. These duties are:

- 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.
- to show 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 same circumstances.
- not to make improper use of Board 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 constituted committees is in breach of this duty. Another person may be able to gain a personal advantage from leaked information or the Club itself may be harmed by it.

Therefore, proceedings of meetings of the Board and of Board constituted committees must be kept confidential from those who are not Directors or Officers of the Club. 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.

- 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 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.

- 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.

- 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. A Director has a “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, for example, an interest in any proposed contractor or supplier involving the Club, an interest as an office-holder in any other organisation including charities and sections of the Club itself, 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 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 Act specifies some limited exceptions to this prohibition).

- 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.

- 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.

Director’s Training

It is a condition of appointment that a Director will successfully undertake mandatory training to the Club’s satisfaction within the first six months of appointment. Suitable courses are provided by ClubsNSW, for example.

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 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 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));

- 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)(d)), 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 I of the Registered Clubs Act.

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 Secretary (General Manager). A Director acting alone has no authority or power unless the Board has 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 a section of the Club. 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 Secretary (General Manager) and adopt clearly defined delegations of authority between the Board and the Secretary;
- to oversee the plans of managers for the attainment of the Club's goals, and to review at reasonable intervals the progress of the Club towards achieving them. For example, the Board is required to consider and approve a monthly statement of the Club's financial position.

The Board also has the following managerial duties which are generally delegated to managers and are to be read subject to the duties of club managers 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 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 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.

The final decision of the Board in any instance must 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 may, at that Director's choice, be expressed and recorded in the Board minutes. 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.