

ACL ASIA PACIFIC COORDINATION PTY LTD (Company)

CODE OF CONDUCT ON CONFLICTS OF INTEREST

This code of conduct applies to conduct and behaviour of each Director of the Company at board meetings, committee meetings and any interactions the Director has directly or indirectly with Company employees, or any other the Company processes and procedures. All existing and new Directors shall receive a copy of this code and shall be deemed to have accepted it.

1. Introduction

- 1.1 The aim of this document is to set out the policy of the Company in relation to circumstances where a Director is subject to an actual or perceived conflict of interest.
- 1.2 Each Director is subject to statutory and common law duties in relation to their roles as officeholders of the Company. The relationship between a Director and a Company is fiduciary in nature, which means that a Director undertakes to act in the interests of the Company and not in his or her own interests. Each Director owes a duty of loyalty to the Company and must always act in its best interests. A Director must not allow conflicting interests or personal advantages to override the Company's interests. Any conflict of interest must be managed in accordance with this code of conduct. Where a Director's conflict of interest has been authorised by a decision of the other Directors, that authorisation is conditional on the Director complying in full with this code of conduct.
- 1.3 **Please note that this code of conduct and its contents does not constitute legal advice. We strongly recommend that each Director take reasonable steps to understand their duties to the Company and, if in doubt, seek specific legal advice.**

2. Conflict situations

- 2.1 In this code of conduct, a conflict of interest means any situation where an interest of a Director (whether personal, by virtue or duty of loyalty to another organisation or otherwise) conflicts, or might reasonably be regarded as conflicting with the interests of the Company or the Director's duty of loyalty to the Company. A conflict may involve direct or indirect financial interest, but may also be non-financial – for example a past or present business or personal association or relationship. Directors nominated by external bodies must act independently of the body which appointed them and act only in the best interests of the Company. If this would lead to a Director acting in a way which conflicts with the interests of the body appointing them, the Director must consider whether they personally have a conflict of interest – they may do if they owe a duty of loyalty to the appointing body. The overriding duty of a Director is to act in the interests of the Company as a whole and not in any sectoral or personal interest. Conflicts of interest can inhibit open discussions and may result in irrelevant considerations being taken into account or decisions being taken not in the best interests of the Company.
- 2.2 The Company will exercise its functions as a coordinator and schedules facilitator pursuant to Australian Federal and State Legislation and regulations, relevant to the allocation and withdrawal of Slots and coordination of schedules for aircraft at airports, in force from time to time and any binding authority or obligation on the Company or to which the Company is subject by any Governmental Authority (as defined in the Constitution) (the **Enabling Provisions**). The Company will exercise such functions in an independent, neutral, non-discriminatory and transparent manner, and with such functions separated from those of any interested party (such as an airline, airport or government).

- 2.3 In allocating slots and imposing sanctions for their misuse, the Company discharges a public function, and its decisions may be amenable to governmental or judicial review. The Company must make decisions in an even handed and impartial manner, without actual bias, or the appearance of bias. A conflict of interest may arise where a Director with responsibility to act as an impartial board member may be affected, or may be perceived by a reasonable and informed observer having considered the facts to be affected, by a competing interest such as to give rise to a real possibility of bias in the Company's decision-making.
- 2.4 It would be improper for a Director to put direct or indirect pressure on other members of the board or employees charged with the allocation of slots or administration of the sanctions scheme, and any decision influenced by such pressure might well be unlawful.
- 2.5 Please note that (a) clause 11.4 of the Company Constitution obligates the Company to maintain this Conflict of Interest Code of Conduct; and (b) clause 10.5 of the Company Constitution further specifies that no member of Airport Coordination Limited Company number 02603583, or any of its subsidiary companies, should have any involvement with the Company or access to any information relating to the slot management decisions of the Company, except to the extent necessary to comply with applicable laws, the WASG and the Enabling Provisions.

3. **Overview of the Company's conflicts procedure**

- 3.1 A Director must disclose any interest in a matter to be decided by the Directors in accordance with s 191 of the *Corporations Act* (Cth). Any conflict between the interests of the Company and the interests of a Director and any conflict between the duty of loyalty owed to the Company and the duty of loyalty a Director may have to any other organisation must be:
- (a) identified;
 - (b) managed in accordance with this code of conduct; and
 - (c) minuted by the board.

4. **Declaring interests generally**

- 4.1 All Directors must declare their personal interests, and any gifts or hospitality received in connection with their role in the Company.
- 4.2 A **Director Declaration of Interests Form** should be completed:
- (a) by all new Directors;
 - (b) annually by all existing Directors; and
 - (c) when any existing Director becomes aware of a new interest.
- 4.3 Directors must err on the side of caution when completing their Declaration of Interests Form, listing all interests which may give rise to a conflict of interests.
- 4.4 A **Register of Directors' Interests** will be maintained by the Secretary or if none, the Chair, and be accessible to the Directors.

5. **Identifying conflicts of interest**

- 5.1 It is acknowledged that Directors or persons connected to them (including the Company and its parent companies, Airport Coordination Limited Company number 02603583 and ACL International Coordination Limited Company number 08998953 (**ACL Group**), members (**Members**)) may have a commercial interest in regulatory and other decisions made by the Company.
- 5.2 A Director will have a conflict of interest if an issue arises which affects the Member which appointed them more than Members generally (e.g. a slot allocation decision), or a decision which similarly affects a directly competing Member (e.g. operating at the same airport or on the same routes), or discussions about the same. There may also be a conflict of interest (given the Company's obligations under the Enabling Provisions) where a Member or Members is/are in a position to secure commercial advantages over competitors who do not have the same opportunity to influence the board of the Company through the Company membership or their relationship with one or more Members of the Company (e.g. through seeking to shape the content of the Misuse of Slots Enforcement Code other than through the regular consultation review process).
6. **Process for specific declaration of interests and identification of any conflicts of interest in relation to Board or Committee decisions**
- 6.1 Each agenda for Directors' meetings and the Company Committee meetings will include an item for declaration of interests and identification of any conflicts or potential conflicts of interest.
- 6.2 Prior to, or at the beginning of any Director decision making process (or committee meeting), Directors must declare:
- (a) any interest in relation to matters on the agenda;
 - (b) whether the interest gives rise to a conflict; and
 - (c) if there is a conflict, whether the conflict is material.
- 6.3 After disclosure by a Director of an interest which the Director regards as not giving rise to a conflict of interest, the other Directors will have the right to determine (without the conflicted Director being present) whether a conflict exists in the circumstances. Any determination regarding the existence of a conflict will be made by a majority vote of the other Directors taking part in the decision-making. The interested Director cannot vote or be counted in the quorum in relation to the decision about whether their interest does or does not give rise to a conflict.
- 6.4 Generally, a conflict disclosed by a Director will be regarded as material where the Director has declared it to be so, or where there is a clear risk of actual bias, or the conflict is likely to create an appearance of bias, by the decision-maker (the board of the Company) in the eyes of a fair-minded and informed observer, having considered the facts. If there is any uncertainty whether a conflict is material, the Chairperson will make a ruling which is final and conclusive.

7. Managing material, non-material and generic conflicts of interest

- 7.1 If a conflict is disclosed but not regarded by the Chairperson as being material then the conflict shall be deemed authorised and the relevant Director will be entitled to participate fully in the Board or Committee discussions, voting and quorum in relation to the issue giving rise to the conflict.
- 7.2 Where the Chairperson decides or agrees that a conflict is material the following action will be taken:
- (a) if the Chairperson believes that the disclosure to the conflicted Director of information regarding the conflict would put them at a competitive advantage to competitors who are not members of the Company, then the Secretary will implement 'information barriers' regarding the area of conflict prohibiting the conflicted Director from receiving information about the conflicting matter;
 - (b) the conflicted Director will not take part in the discussions in relation to the conflicting matter to avoid inadvertently influencing the non-conflicted Directors;
 - (c) the conflicted Director will not participate in any meeting for quorum or voting purposes with regards to the conflicting matter;
 - (d) the Secretary should note in the minutes of the relevant meeting and the Register of Interests the conflict and the issue in relation to which it is regarded as material and outline the discussion and actions taken to manage the conflict; and
 - (e) the Chairperson or the Secretary will inform the conflicted Director of the measures proposed in respect of the conflict.
- 7.3 There may be situations where all the Directors appointed by airline members have an interest and arguably a conflict of interest. In such situations, a Director may participate in decisions from which he or she indirectly benefits provided the benefit is generic such as :
- (a) the benefits are available to all the subjects of the Company regulatory activities; or
 - (b) the benefits are consistent with the Company's regulatory objectives as set out in the Enabling Provisions; or
 - (c) it is a general policy or practice decision affecting the service in which the Director's member, along with other users, participates.
- 7.4 In any other situations where the board is conflicted such that there can be no quorum, the Directors should seek legal advice.
- 7.5 Directors not attending a proposed Board or Committee meeting should nevertheless in advance of the meeting make the necessary declarations under 6.2 to the Chair or Secretary.

8. Record keeping

- 8.1 All discussions and decisions about a conflict of interest must be recorded and reported in the minutes of the meeting, in accordance with s 191 of the *Corporations Act* (Cth). The report should record:

- (a) any relevant interests of the Directors;
 - (b) any conflicts of interest, including any decisions made as to whether a Director did or did not have a conflict of interest;
 - (c) the actions taken to manage the conflict in accordance with the Company's constitution;
 - (d) the names of persons present for discussion; and
 - (e) any other relevant information.
- 8.2 The information provided by Directors will be processed in accordance with Data Protection Principles as set out in the *Privacy Act 1988*. The data will be processed only to ensure that the Directors act in the best interests of the Company. The information will not be used for any other purpose.
9. **Application of this code of conduct to Directors' actions generally**
- 9.1 This code of conduct applies to all interactions the Director has directly or indirectly with the Company staff, and any other the Company processes and procedures.
- 9.2 Directors should not seek outside of the boardroom to influence the actions of the Company's management team, particularly in relation to slot allocation and withdrawal and imposition of sanctions, in a way which would not be permitted under this code of conduct in the boardroom. Specifically, the Directors should not, on behalf of the member appointing them, engage with the Company or its management in relation to any business of the Company.
10. **Declaration of interests by prospective Directors**
- 10.1 Prospective Directors will be asked to consider whether there are any potential conflicts of interest before they are appointed (e.g. by virtue of their having a significant current role in slot allocation or coordination at an airline). Directors shall be made aware of any possible conflicts of interest involving the prospective Directors in order for the Directors to be able to take this into account when voting on appointment.
11. **Monitoring Compliance and Reviewing this code of conduct**
- 11.1 If a Director becomes aware of a breach of this code of conduct, they must report it to the Chairperson and the Secretary as soon as possible.
- 11.2 This code of conduct will be reviewed on an annual basis or more frequently if considered necessary by the board.