

Managing Conflicts, Related Party Transactions and Directors' Interests

RedHill Education Limited
ACN 119 952 493

1. PURPOSE & SCOPE

Directors and officers of RedHill Education Limited (RedHill or the Company) have duties concerning the disclosure and appropriate management of transactions which involve their interests. In addition, they owe duties to the Company to act in good faith, in the best interests of the Company, and not misuse their position or information obtained for personal gain.¹

The purpose of this Policy is to set out the process to be followed by RedHill directors in regard to:

- (a) disclosing and managing conflicts and personal interests;
- (b) voting on board matters involving a conflict or personal interest;
- (c) identifying and managing related party transactions; and
- (e) disclosing their shareholdings.

2. CONFLICTS & MATERIAL PERSONAL INTERESTS

2.1 Conflicts of Interest & Duty

A conflict of interest arises where a director has a personal or professional interest that:

- (a) conflicts with the interests of the Company; or
 - (b) may reasonably be perceived to conflict with the interests of the Company,
- the effect being that the director is no longer in a position to make an impartial decision.

A conflict of duty, on the other hand, is a conflict between two different legal or ethical duties. A conflict of duty arises when a director's obligations to one company are compromised by his or her obligations to another company. For example, where a director of the Company is entering into a material contract with another company of which they are also a director.

The Corporations Act and the Company's Constitution require directors to disclose any conflicts they have, or may have.² Conflicts must then be appropriately disclosed and managed.

2.2 Material Personal Interests

Whether a director has a material personal interest in a matter relating to the Company will depend on the circumstances of each case. One question to ask is: Would a reasonable person conclude that the interest has the potential to influence a director on the decision to be made? It will therefore be a matter of careful judgment for the director, having regard to what is material to the director and what is material to the Company. A material personal interest may not necessarily be a conflict.

¹ Per ss180-183 Corporations Act.

² Corporations Act s191, RedHill Constitution Clause 107

If a director has a ‘material personal interest’ in a matter that relates to the affairs of the Company they must give the other directors notice of that interest.³ The notice must give details of the nature and extent of the interest, and how it relates to the affairs of the Company.

3. DISCLOSING CONFLICTS & MATERIAL PERSONAL INTERESTS

Directors must notify the Company Secretary as soon as practicable after they become aware of any conflicts, potential conflicts or personal interests that have the potential to become material. Such matters might include:

- (a) directorships of other companies,
- (b) their Related Parties⁴ (see section 4 below),
- (c) shareholdings or interests in entities who have dealings with the Company or its related entities.

Directors of the Company are encouraged to disclose any personal interests, which although not material, have the potential to become material. The question of materiality can be properly determined by the board in the context of the particular matter before it.

3.1 The Register of Directors’ Interests– standing notice

The obligation on a director to notify other directors of any conflicts or material personal interests can be satisfied by the director serving a ‘standing notice’ detailing the nature and extent of the interest.⁵ The nature and extent of the interests disclosed in the Register must be recorded in the minutes of the meeting in which the standing notice is tabled.⁶

The Register of Directors’ Interests serves as a standing notice for these purposes.

Disclosure should be made to the Company Secretary who will add the interest to the Register of Directors’ Interests, and table the Register at each board meeting. Directors will be asked to confirm the accuracy of the Register, and the result will be minuted.

Incoming directors should receive a copy of Director’s Questionnaire in their induction pack, and complete and return it to the Company Secretary prior to their appointment. The Company Secretary will use the information supplied in the Director’s Questionnaire to update the Register for tabling at the next board meeting.

3.2 Dealing with Conflicts & Material Interests at board meetings

Where a director has a personal interest (as disclosed in the Register) that relates to an agenda item, it might be necessary for the board papers for that particular matter to be withheld from the director. Where the Company Secretary identifies such an issue in advance of the board meeting,

³ Corporations Act s 191, RedHill Constitution Clause 107

⁴ Within the meaning of the Corporations Act s228

⁵ Corporations Act s192(1), RedHill Constitution Clause 108

⁶ Corporations Act s192(4), RedHill Constitution Clause 108

they will discuss the matter with the Chair and, in conjunction with the director, determine the appropriate course to take.

The Agenda for each board and committee meeting should include a standing item entitled 'Disclosure of Interests'. Directors should be asked to disclose at the commencement of each meeting if they have a conflict or material personal interest in relation to any item on the meeting agenda.

If, during a board meeting, a director identifies a conflict or material personal interest, the Company's constitution and the Corporations Act⁷ require that the director must not be present while the matter is being discussed, or vote on the matter, unless the directors without an interest pass (and minute) a resolution that:

- (a) identifies the director and the nature and extent of the material personal interest and its relation to the affairs of the company; and
- (b) those directors are satisfied that the personal interest should not disqualify the director from being present or voting on the matter, for example because it's in the best interests of the company and the director's interest is not material.

4. RELATED PARTY TRANSACTIONS

There is a risk that the interests of a related party may influence the decision-making of directors to the detriment of the interests of shareholders when an entity is considering whether to enter into a transaction with a related party.

Accordingly, the Corporations Act⁸ provides that if a public company (or its controlled entities) wishes to give a financial benefit to a related party:

- (a) it must obtain shareholder approval in the manner prescribed by ss217-227 of the Corporations Act.; or
- (b) giving the financial benefit must fall within a permitted exception as per ss210-216 Corporations Act .

The process requiring directors to disclose their material personal interests in paragraph 3 above, assists the board to determine if any transaction being entered into is a related party transaction.

4.1 Who is a related party?

Related parties are defined in the Corporations Act⁹ and include:

- (a) directors of the company;
- (b) spouses of a director of the company;

⁷ Clause 106 RedHill Constitution and s195 Corporations Act

⁸ s208 Corporations Act

⁹ s228 Corporations Act

- (c) parents and children of a director of the company;
- (d) an entity that controls the company;
- (e) an entity controlled by any of the above (unless the entity is also controlled by the company);
- (f) an entity that was one of the above in the past six months;
- (g) an entity that believes or has reasonable grounds to believe it is likely to become one of the above at any time in the future; and
- (h) an entity acting in concert with any of the above related parties on the understanding that the related party will receive a financial benefit if the company gives the entity a financial benefit.

4.2 What is a financial benefit?

The definition of financial benefit is very broad. Where some sort of benefit or arrangement is entered into with a related party, it is likely the arrangement will constitute the giving of a financial benefit. Specific examples of financial benefits include:

- (a) giving and receiving services;
- (b) leasing an asset;
- (c) issuing securities;
- (d) granting options; and
- (e) releasing obligations to pay.

Financial benefits may also be given:

- (a) indirectly, for example through one or more interposed entities;
- (b) by making an informal agreement, oral agreement or an agreement that has no binding force; and
- (c) in situations in which no money is paid, for example, where a financial advantage is provided.

4.3 The 'Arm's Length' exception

Under the Corporations Act, member approval is generally not required for:

- (a) transactions that are on arm's length terms;¹⁰
- (b) benefits that are reasonable remuneration or reimbursement of officers' and employees' expenses; and
- (c) certain other transactions or financial benefits given under a court order.

The arm's length exception applies where the terms given to the related party would be reasonable in the circumstances if the company and the related party were dealing at arm's length, or on terms

¹⁰ s210 Corporations Act

RedHill Education Managing Conflicts, Related Party Transactions and Directors Interests – Policy that are less favourable to the related party.

When considering whether the arm's length exception applies to the financial benefit at hand, ASIC has issued the following guidance in RG 76:

Comparable transactions:

A good indicator of arm's length terms is to consider how the terms of the overall transaction compared with those of a comparable transaction completed between unrelated parties. Consider whether there are any key provisions and terms that appear excessively onerous or generous and are therefore less likely to be considered reasonable.

Nature of the bargaining process:

The nature and content of the bargaining process, including how the transaction was initiated, structured, negotiated and disclosed to directors. It's not necessary to show that the parties negotiated on an arm's length basis to decide the terms. However, factors relating to how the parties conducted themselves in forming the terms are relevant in deciding whether the outcome of negotiations could reasonably have been achieved by uninfluenced, self-interested parties in the circumstances.

Impact of the transaction on the Company:

Consider whether:

- there is a negative effect on the company's financial position or performance that is not balanced by the positive effects;
- the transaction fits within the business plan of the entity, and
- whether the terms are fair, given the expected return on the relevant asset.

Further detail and guidance on the factors to consider when determining whether the board can rely on the arm's length exception are set out in RG76.

4.4 Dealing with a related party transaction at board meetings

In the event a related party transaction is identified prior to being considered by the board, it should be handled as follows:

- (a) A briefing of the potential conflict should be provided to the board, by way of a stand-alone agenda item, including details of the proposed transaction, the parties concerned and the nature of their relationship. The briefing should also state whether and why any exemption to obtain shareholder approval is available (by way of legal advice, for example, from the Company Secretary).
- (b) Where the board resolves that a proposed transaction is subject to an exemption and does not require shareholder approval, it should ensure that a resolution to this effect is minuted. If it decides that shareholder approval is necessary, it should set in place the procedures for seeking such approval.
- (c) Upon determining that an exemption applies and proceeding to vote on the transaction, the

board should follow the same process outlined in section 3.2 above. Where the board has identified a related party by reason of a particular director's relationship with that person, it is best practice for that director to remove themselves from the discussion and abstain from voting on the matter. The director may continue to be present and vote if the other directors who do not have an interest pass the resolution described in section 3.2 above, however it difficult to see how this could be achieved once a related party status has been established.

6 DISCLOSURE OF DIRECTORS' SHAREHOLDINGS

6.1 Notifiable Interests

Pursuant to ASX Listing Rule 3.19A, RedHill must notify the ASX (via an Appendix 3 announcement) of any changes that occur in a director's Relevant Interest in RedHill within 5 business days of such Dealing taking place. This also satisfies a Director's personal obligation to notify the ASX of his or her Relevant Interests pursuant to s205G of the Corporations Act. The annual directors' report must also include similar details.¹¹

A person has a Relevant Interest in a security if they are the registered holder of the security or if they have the power to control voting or disposal in respect of the security, irrespective of how remote the interest is.¹² Accordingly, a Relevant Interest may arise if:

- a) the securities are jointly held by a director and another person (eg spouse or family member);
- b) the securities are held in the director's family trust or superannuation fund; or
- c) the securities are held by a company in respect of which the director has direct or indirect control over 20% of the voting power.¹³

Accordingly, as soon as practicable after Dealing in RedHill Securities, directors of RedHill must notify the Company Secretary of the trade and provide a copy of the trade confirmation, so that the Company Secretary may lodge the requisite ASX notices and update the Register of Directors' Interests, in order for the Register to be tabled and minuted at the next RedHill board meeting.

6.2 Notifying ASX of substantial holdings

The Corporations Act requires persons (including RedHill directors) to give a notice to both RedHill and the ASX if they (together with any Associates) begin to have, or cease to have, a Substantial Holding in RedHill or if they have a Substantial Holding and there is a movement of at least 1% in their holding.¹⁴ The notice must be lodged within 2 business days after they become aware of the information.

A Substantial Holding is a Relevant Interest of 5% or more (of the voting power of those shares)

¹¹ Corporations Act s300(11) and (12).

¹² Corporations Act s 608(1).

¹³ Corporations Act s 608(2), (3).

¹⁴ Corporations Act s671B.

under the control of the director and/or their Associates.¹⁵ Associates include:

- a body corporate controlled by the director;
- another person acting, or purporting to act, in concert with the director in relation to REDHILL's affairs; or
- a person with whom the director has, or proposes to enter into an agreement, for controlling or influencing the composition of the REDHILL board or the conduct of the entities affairs.¹⁶

It is the responsibility of RedHill directors to lodge the applicable forms (with assistance from the Company Secretary) where their Relevant Interest in RedHill meets the Substantial Holding thresholds.

The purpose of the substantial holding provisions is to ensure that holders, directors and the market have timely access to sufficient information about the controllers of substantial blocs of voting shares.

Further information is contained in ASIC Regulatory Guide 5: Relevant Interests and substantial holding notices.

APPROVED BY THE BOARD ON 28 JUNE 2019

¹⁵ Corporations Act s9.

¹⁶ Corporations Act s12(2).