

Board conflict of interest policies

ACCION VENTURE LAB



Getting started: creating a conflict of interest policy for your board

What:

- **Guidelines for how board directors will manage personal and professional dynamics** that could interfere with their ability to advise with the company's best interest in mind.
- Typical policy contains **three key sections**: 1) statement of policy, 2) definition of conflicts and parties to whom the policy applies, 3) procedures for reporting conflicts.

Why:

- As company operations expand and external parties join the board, **potential conflicts may become both more common and less obvious**.
- Unidentified conflicts could lead to directors influencing company activities for personal benefit, intentionally or unintentionally, **at the expense of the company's best interest**.

How:

- Clearly define policy parameters and set a **regular cadence for directors to disclose** and discuss potential conflicts.
- Outline **expectations for how board will handle potential conflicts** as they arise.

When:

- As soon as you're having conversations about a **non-employee joining the board** (*preferably prior to selecting that director*).

Best practices for implementing and maintaining a conflict of interest policy (1/2)



- Understand conflict of interest **guidelines outlined by your company's incorporated jurisdiction and/or regulatory requirements** that apply to your product.
- Craft conflict of interest policy in collaboration with legal counsel, including **definitions of conflicts and parties** (who the policy pertains to).



- After crafting the policy, **dedicate time in a board meeting to introduce it to the directors** and leave time for discussion / questions.
- After introducing the policy live, **follow up with an initial conflict questionnaire** asking directors to disclose any potential conflicts.



- Create a **board culture that encourages open dialogue** over conflict of interest.
- With dynamic company operations, you won't be able to anticipate every possible conflict, so it's important to **normalize the process and importance of discussing them** as they arise.

Best practices for implementing and maintaining a conflict of interest policy (2/2)



- Set a **regular cadence for revisiting the policy** and discussing any personal / professional dynamics or changes to company operations that may have created new conflicts.
- **Identify a policy owner** to maintain policy and review meeting agendas for potential conflicts.
- Formal disclosure is typically done **annually via a questionnaire** (*see appendix for example*).
- Include time at the beginning of every board meeting for directors to **disclose conflicts with topics on the agenda**.
- Board meetings should **refrain from voting, and in some cases recuse from the discussion** on issues where they have a conflict.
- **Meeting minutes should reflect discussion of conflicts** and how they were resolved.



- Align with board on **procedure for how to handle conflicts** long-term.
- For short-term / situational conflicts, **directors may just refrain from voting** on the issue.
- For longer-term or more substantial conflicts, **the board may need to discuss how to remove the conflict, or, in extreme situations, find a replacement** for that director.



Common conflicts of interest to watch out for (1/2)

These common examples are not exhaustive; your company's conflicts will depend on your unique business operations

Watch-out	Example	Potential Solution
Competing professional interests	<ul style="list-style-type: none"> A board member with financial or personal interest in a competitor, or even partner, of the company may be swayed to vote in a way that benefits other parties above the company. This board member may also have access to confidential information not appropriate for use in the board setting. 	<ul style="list-style-type: none"> If competition priority is temporary, board member may simply abstain from voting on matters related to the issue. Longer-term, board member will likely need to disassociate from either the company or the competitor / partner and, if the former, find a suitable replacement.
Personal relationships	<ul style="list-style-type: none"> A board member with a personal relationship with a key company employee (e.g., family, romantic relationship) may not be see company dynamics objectively. 	<ul style="list-style-type: none"> Board member will likely need to find a replacement representative without personal ties to company.
Number of other board seats held	<ul style="list-style-type: none"> A board member that also serves on a significant number of other boards may not devote the time required to contribute to / prepare thoughtfully for board discussions. 	<ul style="list-style-type: none"> Conflict of interest policy may specify number of boards its members are able to serve on. Board members with significant number of other engagements may be able to serve as board observers rather than voting members.

Common conflicts of interest to watch out for (1/2)

These common examples are not exhaustive; your company's conflicts will depend on your unique business operations

Watch-out	Example	Potential Solution
Domineering relationships / board dynamics	<ul style="list-style-type: none"> Situations where one board member has a position of influence – directly or indirectly – over another may prevent healthy debate / dialogue; it's important for every director to have a voice in the discussion. 	<ul style="list-style-type: none"> Board chairman may address individual situations as they arise, referring to policy expectations around how board members interact with each other. If situation does not resolve, board may need to find a replacement for the domineering board member.
Access to company information and use of company products	<ul style="list-style-type: none"> Since board members have access to non-public information, they are typically unable to engage in financial transactions with the company; in the case of fintech companies, this may mean that board members using the company product – while great- poses legal concerns. 	<ul style="list-style-type: none"> In case of fintech companies, board members likely need to abstain from using company products to avoid conflict of interest. For regulated products, policy should include guidelines around following insider trading restrictions.
Separating CEO and Board Chairman positions	<ul style="list-style-type: none"> <i>See “Best Board Practices” resource for additional information.</i> 	<ul style="list-style-type: none"> <i>See “Best Board Practices” resource for additional information.</i>
Director compensation decision-making	<ul style="list-style-type: none"> <i>See “Best Board Practices” resource for additional information.</i> 	<ul style="list-style-type: none"> <i>See “Best Board Practices” resource for additional information.</i>

Example policy language

- Using standard language can speed up the drafting and approval process. See sample conflict of interest policies and disclosure forms here:
 - <http://www.publiccounsel.org/tools/assets/files/CoIMemo.pdf>
 - https://www.capl原因.org/resources/modelpoliciesDocuments/CAPLAW_SampleCOIBOD_withHS.pdf
 - <https://vlaa.org/resources/sample-policies/>
- Some policies outline specific conflicts, while others leave the definition open-ended
 - Either format works for the policy (as long as you specify that the list is not exhaustive), but it may be helpful to give specific examples of requested disclosures (e.g., personal relationships, connections to other companies, etc.) in the questionnaire.

Thank you.