

# The Code of Conduct for Ports: Lessons of Experience



Presentation by Bill Hearn, Partner  
McMillan Binch Mendelsohn LLP  
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# Outline

- How to comply with the Code of Conduct for CPA directors and officers (D&Os)
- Some challenges of applying the Code: Conflicts, Gifts, Inside Information, Outside Employment, Records & Privacy
- Beyond the Code
- Scenarios

# Background

- CPA D&Os are subject to the Code of Conduct built into their CPA's Letters Patent
- The Code addresses, among other things, how D&Os must seek to avoid and, where unavoidable, manage conflicts of interest

# Objective of the Code

- To enhance public confidence in the integrity and impartiality of D&Os and the business activities and transactions carried on by CPAs by establishing clear conflict of interest rules (s. 1.1)

# Interpreting the Code

- 3 principles (s.1.2):
  - Every D&O must conduct themselves in a manner so as to preserve impartiality of the CPA
  - Duty may go beyond acting merely in accordance with technical requirements
  - Appearance of conflict may be as detrimental as actual conflict

# Scope of Code Obligations

- May require additional action to be taken beyond the specific requirements of the Code (s. 1.5)

# Main Legal Duties of CPA D&Os Under the Code

1. Acknowledge compliance with Code
2. Avoid conflicts (or at least manage and resolve them as they arise through disclosure to Board and absenting self from meeting)
3. Follow disciplines for acceptance or offering of gifts
4. Do not use corporate information for personal benefit

# Acknowledgement Requirement

- Each D&O has to acknowledge annually in writing that they have read the Code and are in compliance (ss. 1.6 and 1.8)

# 1. Conflicts Of Interest

- Generally,
  - Avoid conflicts or appearance of conflicts with respect to personal interests or personal interests of a “Related Party” (s. 2.1)

## Definition of “Related Party”

- Spouse, child, brother, sister or parent
- Relative other than above, or a relative of the spouse of a director or officer if the relative has same residence as the director or officer

## Definition of “Related Party”

- A corporation, partnership, trust or other entity which is directly or indirectly controlled by such director or officer or by a spouse, child, brother, sister or parent of such director or officer
- A partner of such director or officer acting on behalf of a partnership of which the director or officer and the partner are partners

# Types of Conflicts

- Types:
  - Competition with the CPA
  - Transactions with the CPA or a User;  
Material Interests
  - Interest in Material Contract
  - Acceptance of Offices with Conflicted  
Entities

## Some Conflicts Can Be Approved

- The following shall not be deemed conflicts if prior written approval of Board is obtained (s. 2.3):
  - Acceptance of Offices with Entities Benefiting from CPA
  - Use of CPA Property

## Conflicts Must Be Disclosed

- Written disclosure must be made after D&O becomes aware of conflict or appearance of conflict (s. 3.1)
- D&O can't vote or provide recommendations on any matter related to the conflict (s. 3.3)

## Conflicts Must Be Disclosed

- D&O must absent themselves from portions of meetings during which the transaction giving rise to the conflict is considered (s. 3.4)
- A single written annual disclosure is required for recurring conflicted transactions (s. 3.5)

## Voluntary Actions Once Conflict Disclosed

- When a conflict arises, a D&O may voluntarily choose to address the conflict by (s. 4.1):
  - Divestment
  - Withdrawal
  - Resignation
- These actions are not determinative (s. 4.2)

## Determination By Board

- Board makes final determination as to (s. 4.3):
  - Whether there is a conflict
  - Whether D&O has complied with Code
  - Whether the conflict has been addressed
  - In the case of an officer, measures to be taken or sanctions
  - In the case of a director, whether they should resign

## Opportunity To Be Heard

- D&Os have opportunity to be heard in connection with initial determination, recommendation and determination

# Possible Compliance Measures

- Voluntary actions mentioned above
- Disclosure if satisfactory
- Other actions
- Director resigns
- Sanctions imposed against officers

## 2. Gifts

- Definition (s. 1.3)
  - “Gift” includes any good, service, benefit, hospitality, promise of favour
- General Rule
  - No director or officer shall offer gifts to, or accept gifts from, users or potential users without the prior written consent of the Board (s. 5.1)

# Gifts

- But, gifts may be accepted or offered if the gift:
  - is not cash or cash equivalent
  - is not intended to be and not of sufficient value to be construed as a bribe
  - is of modest value and its acceptance is customary business practice

## 3. Inside Information

### Rule on Use (s. 6.1)

- Cannot use information for personal benefit or for benefit of any other person unless information is disclosed to public

# Inside Information

## Rule Against Disclosure (s. 6.2)

- Shall not disclose any Confidential Information about CPA which has not been disclosed to the public without prior written consent of Board
- Confidential Information is information on business and affairs of CPA acquired in connection with position

# Inside Information

## Permitted Disclosures (s. 6.3)

- Disclosure is necessary to perform duties including financing transaction
- Disclosure is required by law
- Disclosure is made to professional advisors

## 4. Outside Employment

- Discharge of duties shall not be affected by offers or potential offers of outside employment or appointment
- Must disclose to Board forthwith in writing any firm offers of employment that may affect performance as a director or officer

# Requirements Beyond the Code

- Voluntary compliance by director or officer with measures in Code (i.e., divestment, withdrawal or resignation) does not relieve:
  - the director from complying with such other measures as the entity appointing the director determines to be appropriate; or
  - the officer from complying with such other measures as the Board determines to be appropriate (s. 4.2)

## 5. Records and Privacy

- All information provided by director or officer in connection with the Code will be kept confidential
- Board shall make all efforts to ensure that privacy of the director or officer disclosing personal information is respected

# Requirements Beyond the Code

- *The Conflict of Interest and Post-Employment Code for Public Office Holders 2006*
- See 2003 letter from Office of Ethics Counsellor re: CPA directors as part-time GIC appointees (in handout)
- Recent appointees have received similar letters this Fall from Ethics Commissioner Dr. Raymond Shapiro
- See also FAQs on Commissioner's website



## Requirements Beyond the Code

- Section 19 of CMA permits CPA director to be removed “for cause” by the entity that made the appointment (or, curiously, by the “other directors”)
- Office of Ethics Commissioner appears not to initiate investigations but responds to complaints

# Requirements Beyond the Code

- According to statements of the Ethics Commissioner, CPA directors, as part-time GIC appointees, have limits on their “political activities” while they remain on the Board, which include:
  - not holding an executive position in a riding association
  - not expressing political views in a public setting
  - not attending partisan, fundraising or social events being held or sponsored by a political party

# Requirements Beyond the Code

- On the other hand, it is permissible to:
  - vote
  - make donations to a political party (subject to electoral financing laws)
  - hold “simple membership” in a federal political party; however, any “further activities” associated with the membership are not
  - attend all parties’ candidates public meetings

## Requirements Beyond the Code

- It is also permissible for a CPA director to seek nomination to run as a candidate, work for, campaign for, solicit funds for, or otherwise endorse a candidate in a federal election provided the director is on an unpaid leave of absence from the CPA

# Requirements Beyond the Code

## *Code of Business Ethics*

- For directors, officers and other employees
- To deal with matters such as:
  - compliance with laws and regulations
  - record keeping and confidentiality
  - protection and proper use of CPA assets
  - reporting of illegal and unethical behaviour

## Legal Requirements Affecting Corporate Governance in Addition to the Code

- See special requirements in:
  - *Canada Marine Act*
  - *Port Authorities Management Regulations*
  - *Letters Patent*

# Canada Marine Act Review

- No proposals to change the Code in 2003  
CMA Panel Review Report
- Bill C-61: Amendments to Canada Marine Act, June, 2005
  - Contains no revisions to the Code (but could be made by supplementary letters patent)

# Proposed Accountability Act

- First tabled in April 2006 - if passed will:
  - Give more powers to independent officers of Parliament (Auditor General, Ethics Committee)
  - Reform access to information laws
  - Reform political lobbying laws, including new registration requirements and mandatory five-year break before former senior public officials can lobby government

# Proposed Accountability Act

- November 9 - Senate amendments (>100)
  - Extend ethics rules to all ministerial appointees approved by Cabinet (Conservative election promise to "Make part-time or non-remunerated ministerial advisers subject to the Ethics Code")
  - Additional req'ts on acceptance and disclosure of gifts
  - Future of Act and amendments uncertain

## Scenarios - Discussion

- The spouse of a CPA director appointed by the municipality plans to manage the campaign of a candidate running for mayor of that municipality.

## Scenarios - Discussion

- A new luxury ferry service with a base in a CPA's port is being launched and the CEO of the ferry service operator invites the CPA's directors to sample the service free-of-charge for a week.

## Scenarios - Discussion

- A CPA director acts as a federal lobbyist for a terminal operator whose lease agreement with the CPA is up for renewal and is before the Board for consideration given competing future plans for the property.

# Questions

