

Conflict of Interest Policy

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Contents

1	Introduction	1
2	Principles of Conduct Expected	1
3	Best Practice Procedures for Registration and Declaration	1
3.1	General Principles Regarding Declaration and Registration	1
3.2	Categories of Interest to be Registered or Declared	2
3.3	Registration of Own Interests (Direct Interests)	2
3.4	Declaration of Interest (Direct and Indirect Interests)	2
4	Indirect Interests	3
5	Other Issues	3
5.1	Employment Offers	3
5.2	Gifts and Hospitality	3
5.3	Related Party Accounts Disclosure	4
5.4	Shadow Director	4
5.5	Appointments to Other Organisations and Regular Review	4
5.6	Executive Roles	5
5.7	Other Staff Interests	5
5.8	Cooling Off Period	5
	Appendix A: Related Party Transactions	6
	Appendix B: Shadow Director	7
	Appendix C: Appointment to Organisations	9

1 Introduction

As part of EMEC's corporate governance arrangements this document sets out EMEC's Conflicts of Interest Policy.

2 Principles of Conduct Expected

It is incumbent upon EMEC to provide guidance and also to avoid placing both non-executives and executive staff in positions where they may face a conflict of interest. The following are the general principles which underlie the EMEC procedures to avoid conflicts of interest:

- Non-executive Directors and staff should only play a role in the appraisal or decision making process if they can demonstrate objectivity.
- Where an interest exists, either direct or indirect, objectivity will always be assumed to be impaired.
- EMEC should not place non-executive Directors or staff in a position where they may face a conflict of interest.
- EMEC should not appoint any non-executive or member of staff to the Board of any organisation without the prior approval of the Board.
- EMEC should avoid putting people into any situation where they may be interpreted as acting as shadow directors or where a subsidiary situation may be created by virtue of the existence of control and support of another organisation.
- Where EMEC appoints staff or a non-executive Director to a position within another organisation these individuals should never assume an executive role within that organisation.
- Any exceptions from the above principles to be agreed by the Board.

3 Best Practice Procedures for Registration and Declaration

In line with good practice guidance, recommended best practice is as follows:

In summary:

- EMEC Board Members and all staff should register their own direct interests;
- Voluntary registration of indirect interests can be made; and
- EMEC Board Members and staff should declare any direct or indirect interests as and when they arise.

Registration is a formal record on an annual basis of all direct interests whilst a declaration is made during the day to day duties of staff, and Board Members.

3.1 General Principles Regarding Declaration and Registration

General principles exist which should be applied when considering whether an interest should be registered or declared:

- If it is likely that an actual or perceived conflict of interest (direct or indirect) could arise, and EMEC could be subject to criticism or embarrassment then the interest should be declared.
- In considering whether to make a declaration in any proceedings, an individual must consider not only whether they will be influenced but also whether anybody else would think that they might be influenced. The individual must keep in mind that the

test is whether a member of the public, acting reasonably, might think that a particular interest could influence the decision made.

- With respect to any non-financial interest, the test to be applied when considering appropriateness of registration and/or declaration is to ask whether a member of the public, acting reasonably, might consider any non-financial interest could potentially affect an individual's responsibilities to EMEC and to the public, or could influence their actions or decision making.

3.2 Categories of Interest to be Registered or Declared

The following 6 categories of interests should be considered for registration or declaration. Note, however, that the value of any interest does not require to be declared, only the name and nature of the organisation in which the interest is held:

- **Remuneration** received by virtue of being employed, self-employed, the holder of an office, a director of an undertaking, a partner in a firm, undertaking a trade or profession;
- **Related undertakings** – including directorships;
- **Contracts** – where an undertaking, i.e. a corporate body, partnership or unincorporated association, has a contract with any part of the EMEC organisation;
- **Houses, Land and Buildings** which may be significant to the work and operation of EMEC;
- **Shares and Securities** held in a company or organisation which may be significant to the work and operation of EMEC;
- **Non-financial interests** which may be significant to the work and operation of EMEC.

Note that this list is intended to provide examples of types of interests that should be considered for registration and/or declaration and is therefore not exhaustive.

3.3 Registration of Own Interests (Direct Interests)

Guidance for the registration of direct interests is as follows:

- All Board Members and all members of staff, irrespective of grade, are required to formally register their own direct interests annually. Voluntary registration of indirect interests can also be made.
- Registers of direct interests should be maintained for staff and EMEC Board Members, which should be formally updated at least annually.
- Annual guidance should be issued on what is to be registered. Previous declarations should be returned for information. These should be retained for 7 years.
- EMEC Board Members and staff should inform the Finance Director of any changes to their direct interests which occur during the year.
- EMEC's Finance Director will be the key contact and will maintain a record of interests for Board Members and staff. A summary of the register will be shared with the Managing Director and Chair of the Board.

3.4 Declaration of Interest (Direct and Indirect Interests)

The following is guidance on when an interest should be declared:

- No member of staff or Board Member should be involved in any discussions or the decision-making process where they have a direct or indirect interest or where a perceived conflict may exist.
- Any member of staff or Board member with such an interest should declare this either verbally or in writing to the Finance Director as soon as possible after they become aware of it.

- Potential conflicts should be identified at the earliest possible opportunity. This should preferably be in advance of any meeting at which an agenda item, which may result in a potential conflict, is to be discussed. Where direct or indirect interests are known in advance, relevant papers should not be copied to the relevant member of staff or Board Member. The individual concerned should take no further part in the deliberations and should withdraw from the meeting during discussion of this item.
- Where a potential conflict has not been identified in advance, and where a Board Member or staff member attends a meeting at which an item in which they have a direct or indirect interest is to be discussed, this should be declared immediately at the relevant meeting. This declaration should be minuted as appropriate and the individual concerned should take no further part in the deliberations and should withdraw from the meeting during discussion of this item.

4 Indirect Interests

The most common category of indirect interests is likely to be interests of **close family** of the staff or Board Member, but any interests of any **partnership, company, trust** or **other entity** which is a direct interest of the individual should also be considered an indirect interest. Interests which fall under the 6 categories of interest listed in the best practice section of this document should be declared as indirect interests of the Board Member or staff member. Voluntary registration of such interests can be made but is not required.

Close family is defined in FRS 8 as “*those family members, or members of the same household, who may be expected to influence, or be influenced by, that person in their dealings with the reporting entity.*” It is intended to include at least those relatives identified as ‘immediate family’, i.e. spouse, live-in partner, parent, child, brother, sister and the spouses of any of these. Although not specifically stated it is presumed that the individual’s dealings in a business capacity only are covered, i.e. social dealings are excluded.

5 Other Issues

5.1 Employment Offers

Individuals must not be involved in taking a decision if at the same time they are having discussions with the organisation on possible employment. Any prospective move to employment that might arouse criticism must be brought to the attention of the Managing Director.

5.2 Gifts and Hospitality

In the normal course of business, staff and Board Members may be offered gifts or hospitality. Each individual is responsible for the decision made on whether or not to accept these. The individual should bear in mind the risk of damage to public confidence, in particular the suspicion that an individual or an organisation has been advantaged (or disadvantaged) through the acceptance of such a gift or hospitality.

As a general guide, however, it would be appropriate to **decline all offers** except:

- Isolated gifts or hospitality of a trivial or inexpensive nature such as calendars, diaries, pens, chocolates or lunch; and
- Larger or more substantial gifts and hospitality normally associated with duties and which would reasonably be regarded as inappropriate to refuse e.g. bottle of whisky, side of salmon.

In the case of any larger or more substantial gifts or hospitality, this must be declared, and registered. These details should be held by the Administration Officer.

Repeated gifts of a larger or more substantial nature and/or hospitality from the same source should not be accepted.

The individual should also consider whether there may be any reasonable perception that any gift received from any person or organisation in which they have an indirect interest can or would influence their judgement. Particular care should be exercised when hospitality or a gift is offered from any individual or organisation which stands to gain or benefit from a decision of EMEC.

The term 'gift' includes benefits such as relief from indebtedness, loan concessions or provision of services at a cost below that generally charged to members of the public.

5.3 Related Party Accounts Disclosure

FRS 8 requires formal disclosure in the EMEC financial statements of any related party transactions. Further details on the requirements of FRS 8 and the information that should be captured for each transaction with the related party can be found in appendix 1.

Specifically FRS 8 requires the disclosure of:

- Information on related party transactions; and
- The name of the party controlling the reporting entity and, if different, that of the ultimate controlling party whether or not any transactions between the reporting entity and those parties have taken place.

It should also be noted that where a related party has a non-financial interest in an organisation, which has received funding from EMEC then this requires to be disclosed in the accounts.

5.4 Shadow Director

The Companies Act states that a shadow director is defined in law as being “a person in accordance with whose directions or instructions the directors of the company are accustomed to act. However a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity”.

Care should be taken to avoid any suggestion that EMEC has assumed the role of Shadow Director. Particular care should be exercised where staff and/or non-executive directors are not formally appointed to another organisation but routinely attend meetings of that other organisation’s Board. Further details are given in appendix 2.

5.5 Appointments to Other Organisations and Regular Review

EMEC should not appoint any non-executive or executive member of staff to the Board of any organisation without the prior approval of the Board. Appointments should not normally be for more than 3 years, any exception to this should be justified and approved by the Board.

Any appointment to a Board made by EMEC should be reviewed on a regular basis, and at least annually, to determine if this remains appropriate. When making appointments consideration should be given to developing an appropriate exit strategy. Appendix 3 contains further guidance on the criteria which should be used to decide whether an appointment is appropriate.

5.6 Executive Roles

Where EMEC staff or non-executive directors are appointed to the Boards of other organisations by EMEC they should never assume an executive role. This would preclude acting as cheque signatory, preparing applicant claims, signing applicant legal documentation, setting up or operating a bank account.

5.7 Other Staff Interests

The current EMEC contract of employment states that “full time employees will not engage in other forms of paid or unpaid activity during the course of their employment, whether during or outside working hours, without the prior written approval of their line manager. Approval to undertake outside work will not be unreasonably withheld.” Where staff have outside interests, it is a management responsibility to ensure that these interests do not impact on the employee’s duties and responsibilities.

5.8 Cooling Off Period

All interests are deemed relevant for a period of 12 months after the interest ceases to exist. The Board can determine that a longer or shorter period may be appropriate in individual circumstances.

Appendix A: Related Party Transactions

In the context of FRS 8, the following would be considered related parties of EMEC. Related party transactions are those with any part of EMEC, and are where the party has either a direct or indirect interest:

- EMEC Directors; and
- EMEC Board Members

Additionally there is a presumption that the following are also related parties:

- The close family of any of the above; and
- Any partnership, companies, trusts and other entities controlled by the individual or his close family.

In respect of all related parties of EMEC the following information should be captured for any transactions undertaken within the financial year. This should be passed to the EMEC Finance Director in order that a decision can be made on which transactions require disclosure in the relevant financial statements:

- Name of the related party;
- Name of business/organisation;
- Interest/position held (i.e. owner, partner, director, employee, shareholder);
- Date of appointment/resignation;
- Approvals brought forward;
- Amount approved in the current year;
- Percentage of total project cost;
- Amount paid in the year;
- Amount withdrawn;
- Type of assistance approved; and
- Purpose of assistance.

Appendix B: Shadow Director

In certain circumstances, EMEC staff may be regarded as shadow directors thereby incurring risks to themselves as individuals or to EMEC.

What is a Shadow Director?

A shadow director; (who may be an individual or a company), is a person in accordance with whose directions or instructions the directors of the company are accustomed to act. The mere fact that a person gives advice to the directors in a professional capacity, however, does not make that person a shadow director. “Accustomed to act” does not necessarily mean that a board must have followed instructions of another party on more than one occasion. A court may decide that a decision taken on a single occasion was **so material** to the company’s affairs that the instructing party should be deemed a shadow director (e.g. obliging a company to keep trading when it is hopelessly insolvent).

In practice, individuals or companies are only likely to find themselves named as shadow directors by courts where e.g.:

- A minority shareholder brings proceedings on behalf of the company; or
- Where a company has gone into liquidation and the liquidator is seeking to recover funds from those connected with the company.

The objective of the courts in such instances will be to hold liable those persons with **real influence** in the management of the company.

Risks

Shadow directors may:

- Be liable to the same penalties as appointed directors and can be disqualified under the Company Directors Disqualification Act 1986.
- Find themselves faced with a claim for wrongful trading (failing to minimise the potential loss to creditors when he knew or ought to have known that there was no reasonable prospect that the company could avoid an insolvent liquidation). As such a person may be liable for statutory penalties, personally liable to third parties for the debts of the company or liable to the company for intermeddling in its affairs.
- Face claims for breach of duty.

Potential Shadow Director Arrangements

Organisations which have EMEC as a Creditor (e.g. EMEC pursuing repayment of grant or loans, or payment of rent)

There is a risk where a company in financial difficulties has to follow the dictates of a creditor, the creditor may be deemed to be a shadow director. EMEC pursuing repayment of grant or loans, or payment of rent would be a creditor. The creditor may not become a shadow director if the nature of the creditor’s influence is limited to restrictions or conditions necessary for the creditor to continue to make facilities available, and the company is able to choose whether or not to comply with such restrictions. However, the more hands on the creditor’s involvement, the greater the risk of being deemed to be a shadow director. Creditors should be careful of appointing nominee directors if the nominee may be in a position to dominate the board’s decision making.

If a creditor is to become a shadow director it is likely that a considerable degree of interference is probably necessary. Merely requiring the execution of a security or the implementation of

a financial control is unlikely to be sufficient, whereas dictating corporate strategy or requiring the cessation or commencement of a line of business might be.

Do not cross the line into actually directing the company's board.

Advisers

Where directors act on advice given by an adviser acting in a professional capacity they will not be regarded as a shadow director. However, where advice is not given in a professional capacity (or goes beyond advice given in a professional capacity) and has the effect of a direction or instruction upon which the board acts, such an adviser may be found to be a shadow director. Professional advisers should therefore **ensure that all communication is clearly provided on the basis of mere advice or recommendations** to the company, and that the decision on what course of action to take is left to the company. EMEC staff should be wary of attending board meetings of client companies especially if their presence becomes a matter of routine.

Shadow Directors can include non-professional advisers – **the test is whether the adviser has real influence over the company's affairs.**

Key considerations

- Whether something communicated by the alleged shadow director was in the nature of a direction or instruction to the directors, rather than, for example a mere recommendation or advice. Labelling a communication as advice will not be effective if it is clearly meant as an instruction – the substance of the relationship will be key;
- Extent and nature of advice given, particularly when companies are experiencing financial difficulties;
- Extent of involvement in decision making, take care not to become too involved in the decision making process;
- Extent of knowledge of company's affairs;
- Appointing nominee directors who assume a dominant position;
- Dictating strategy;
- Dictating commencement or cessation of areas of business;
- Providing advice which may be interpreted or acted upon as a direction or instruction;
- Avoid giving instructions/ directions;
- Leave decision making process to the directors;
- Decision to keep trading in the event of insolvency must be that of directors only.

Appendix C: Appointment to Organisations

Any appointment of a **non-executive member of staff** made by EMEC to any organisation (e.g. as a Director or Trustee) requires the prior written approval of the Board. The following criteria will be used to decide whether such an appointment is appropriate:

- There is a presumption **in favour of** appointments to organisations which meet the following criteria:
 - Non-trading entity created for the purpose of providing strategic guidance and direction;
 - EMEC is effectively one of many partners acting together to provide strategic guidance and direction;
 - It is unlikely that the organisation will approach EMEC for funding other than for minimal running costs and general research activity (i.e. EMEC will not be required to fund project activity which the organisation will take forward).
- There is a presumption **against** appointments to organisations which meet the following criteria:
 - Do not have a remit to provide strategic guidance and direction;
 - Main remit is as a trading entity or in delivery of projects;
 - Is likely to approach EMEC for funding towards its trading/project activity;
 - The organisation operates and will continue to operate at arm's length from EMEC.
- Where an organisation fulfils both a strategic role and is likely to apply to EMEC for project funding, in addition to basic running costs, the following factors should be taken into account in determining whether it is appropriate for EMEC to appoint a member of executive staff or a non-executive board member to represent the organisation:
 - Business Justification
 - Will the strategic role of the organisation and/or EMEC be seriously compromised by EMEC not being represented on this organisation?
 - Financial Risk
 - What are the financial risks of taking a role in the organisation:
 - Will a subsidiary relationship be created either now or will it be likely to inadvertently arise at some time in the future by virtue of the control and direction exercised by EMEC?
 - Is EMEC comfortable with accepting this holding company status and the consolidation of the results of the subsidiary within EMEC accounts?
 - Does the organisation have debts currently or in the future which EMEC may be responsible for by virtue of:
 - The appointment of a Director;
 - Subsidiary or deemed subsidiary status;
 - Extent of direction or control, i.e. Shadow Directorship.
 - Reputational Risk
 - Will the organisation undertake any activity which may expose EMEC to reputational risk?
 - Will there be external criticism of EMEC being represented or not being represented?

Means of Delivery

If, having assessed the above, it is considered beneficial to have EMEC represented on another organisation the method of achieving the required input should be appraised. The following questions should be asked in reaching a conclusion:

- Is the remit so closely aligned to EMEC that the function should be taken in house?
- Should a separate subsidiary company be formed by EMEC?
- Can EMEC interests be adequately represented by an individual other than a member of staff or non-executive Board Member?
- Is there an appropriate individual at executive or non-executive level within EMEC who could adequately represent EMEC on this organisation?
- In appointing a non-executive or executive member of staff what provisions need to be put in place to ensure that conflicts of interest are avoided in any future applications which this organisation may make to EMEC?

Other issues for Consideration

- A member of staff or non-executive board member being asked to take a position on EMEC's behalf on another organisation should be made aware of their personal responsibilities to both organisations.
- The nature and activity of the organisation being appointed to should be kept under constant review. An annual review should be undertaken and if the organisation changes from a strategic to operational role the continued appropriateness of EMEC engagement should be reassessed and formally represented to the Board.
- An exit strategy should be agreed at the date of appointment.
- Conflicts of interest should be avoided – any member of staff or non-executive board member appointed to an arm's length organisation should take no part in the EMEC decision making process where applications for funding are made to EMEC.

Avoiding Conflicts of Interest

Where a non-executive Board Member or member of staff has a non-financial interest in another organisation as a result of an appointment to represent EMEC, the individual is permitted to participate in any discussion of an application. The individual cannot participate when a decision is made.