



Tla'amin Entities Conflict of Interest Regulation

Enacted under the *Conflict of Interest Law*, section 20

TNR 13/2016

Enacted on April 5, 2016

Amended June 23, 2016

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Deposited in the Tla'amin Registry

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Signature of Law Clerk

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PART 1 - INTRODUCTORY PROVISIONS

Authority

1. This Regulation is made pursuant to section 17 of the *Conflict of Interest Law*.

Purpose

2. The purpose of this Regulation is to govern conflicts of interest for Tla'amin Entities.

Definitions

3. (1) In this Regulation,

"board" means the Bead of Directors of a Tla'amin Entity; *[Amended June 23, 2016]*¹

"board meeting" includes meetings of any board committees of a Tla'amin Entity;

"Chair of the Tla'amin Entity" means the individual appointed to the position of Chair or President of a Tla'amin Entity;

"Law" means the *Conflict of Interest Law*;

"real property" includes an interest in Tla'amin Lands;

"senior officer" means chief executive officer, executive director, senior officer, administrator, office manager, or any individual holding a position of a similar title of a Tla'amin Entity, whichever of them is the most senior; and

"Tla'amin Entity Conflict of Interest Disclosure Form" means the form set out in Schedule A of this Regulation.

- (2) Unless otherwise expressly provided in this Regulation, all terms used in this Regulation have the same meanings as in the Law.

Application

4. This Regulation applies to directors, senior officers, employees, contractors and agents of all Tla'amin Entities.

PART 2 - RESPONSIBILITIES

Directors

5. Directors are responsible for reading and understanding the Law and this Regulation.

Senior officers

¹

The definition enacted on April 5, 2016, with a typographical error, originally read:

"board" means the **Boad** of Directors of a Tla'amin Entity;

In error, the definition was amended with another typographical error on June 23, 2016, to:

"board" means the **Bead** of Directors of a Tla'amin Entity;

6. The senior officer of a Tla'amin Entity is responsible for
 - (a) keeping all records relating to conflicts of interest including Tla'amin Entity Conflict of Interest Disclosure Forms secure and accessible;
 - (b) ensuring that all directors are advised of their obligations under the Law and this Regulation;
 - (c) ensuring orientation on the Law and this Regulation is provided to directors at least once during each term of office; and *[Amended June 23, 2016]*²
 - (d) ensuring that every officer, employee, contractor and agent is informed of their obligations under the Law and this Regulation and must take steps to ensure that employees comply with these obligations.

Chair of a Tla'amin Entity

7. The Chair of a Tla'amin Entity is responsible for ensuring that the senior officer of the Tla'amin Entity is informed of their obligations under the Law and this Regulation.

PART 3 - PROCEDURES FOR DIRECTORS

Disclosure of interests

8. (1) A director must complete a Tla'amin Entity Conflict of Interest Disclosure Form and submit it to the senior officer for that Tla'amin Entity.
- (2) A director must file a Tla'amin Entity Conflict of Interest Disclosure Form under subsection (1) at the following times:
 - (a) within 20 business days of being appointed to the board; and *[Amended June 23, 2016]*³
 - (b) as soon as practical after a material change in the information previously disclosed.
- (3) The senior officer for each Tla'amin Entity must keep all disclosure forms safe and accessible, except for their own, which the Chair of the Tla'amin Entity will keep safe and accessible.
- (4) The senior officer will destroy an individual's disclosure forms seven years from the date the individual last held the office of director.
- (5) The Chair of a Tla'amin Entity will destroy an individual's disclosure forms seven years

² The clause enacted on April 5, 2016, originally read:
 (c) ensuring orientation on the Law and this Regulation is provided to directors at **least** once during each term of office; and

Amended June 23, 2016, to:

(c) ensuring orientation on the Law and this Regulation is provided to directors at **least** once during each term of office; and

³ The clause enacted on April 5, 2016, originally read:

(a) within 20 business days of being **elected or** appointed to the board; and

Amended June 23, 2016, to:

(a) within 20 business days of being appointed to the board; and

from the date the individual last held the office of senior officer.

- (6) Access to the disclosure forms is set out as follows:
 - (a) a senior officer has access to all of the disclosure forms, except their own;
 - (b) the Chair of a Tla'amin Entity has access to the disclosure form of a senior officer; and
 - (c) the Executive Council has access to the disclosure form for an individual who has brought an appeal under section 10(2) or 10(4).

Procedure for addressing conflict of interest

9. (1) As soon as a director becomes aware of circumstances in which they have a conflict of interest or an apparent conflict of interest, they must disclose the circumstances of the conflict or apparent conflict immediately.
- (2) If a director is unsure of whether they have a conflict of interest or an apparent conflict of interest, they may request that the board determine whether they have a conflict or an apparent conflict.
- (3) Where a director does not believe they have a conflict of interest or an apparent conflict of interest but they are concerned that they may be perceived as unable to exercise a power or perform a duty or function in an unbiased manner, they may disclose the circumstances giving rise to their concern and choose to follow the procedures set out in subsections (4) to (7).
- (4) A director must leave any part of a board meeting where the circumstances with respect to which the director has a conflict of interest or an apparent conflict of interest are being voted on.
- (5) The minutes of a board meeting must record the director's disclosure under subsection (1) or (3) and note the director's absence from the meeting when the circumstances with respect to which the director has a conflict of interest or an apparent conflict of interest were being voted on.
- (6) A director must not take part in any discussions or vote on any decision respecting the circumstances with respect to which the director has a conflict of interest or an apparent conflict of interest.
- (7) A director must not influence or attempt to influence in any way before, during or after a board meeting any discussion or vote on any decision respecting the circumstances with respect to which the director has a conflict of interest or an apparent conflict of interest.
- (8) A director who is absent from a board meeting due to the requirements of subsections (4) to (7) will be considered to be present for the purposes of determining whether a quorum is present for that meeting.
- (9) In instances where the majority of directors present at a meeting have a conflict of interest or an apparent conflict of interest respecting a matter, all directors present will be able to discuss and vote on the matter.

- (10) A decision made in accordance with subsection (9) is valid, subject to a review of the decision by the Executive Council to determine whether community interests at large are prejudiced by the directors' conflict of interest or an apparent conflict of interest.

Procedure for undisclosed conflict of interest

10. (1) If a director reasonably believes that another director has a conflict of interest or an apparent conflict of interest in respect of a matter before the board, the director may request clarification of the circumstances at a board meeting.
- (2) If, following a clarification discussion under subsection (1) or after receiving a report from the senior officer under section 11(4), a director does not acknowledge the alleged conflict of interest or apparent conflict of interest and does not take the actions set out under sections 9(1) to 9(7), the board must *[Amended June 23, 2016]*⁴
- (a) agree by consensus or vote regarding whether the director has a conflict of interest or an apparent conflict of interest before the board considers the matter referred to in subsection (1); or
- (b) refer the matter to the Executive Council to render a determination regarding whether the director has a conflict of interest or an apparent conflict of interest before the board considers the matter referred to in subsection (2).
- (3) Any decision made by the board under subsection (2) must be recorded in the minutes of the board meeting.
- (4) If the board determines under paragraph (2)(a) that a director has a conflict of interest or an apparent conflict of interest, the director must
- (a) comply with sections 9(1) to 9(7); or
- (b) refer the matter to the Executive Council to render a final determination regarding whether the director has a conflict of interest or an apparent conflict of interest before the board considers the matter referred to in subsection (2).
- (5) Any decision made by the director under subsection (4) must be recorded in the minutes of the board meeting.

Enforcement and reporting

11. (1) If a director or an employee believes that a director may not have fully disclosed a conflict of interest or an apparent conflict of interest, they must provide the senior officer with a written report stating their belief and the reasons for it.
- (2) If an individual reasonably believes that a director of a Tla'amin Entity is in violation of this Regulation, they may report the matter to the senior officer for that Tla'amin Entity.

⁴ The subsection enacted on April 5, 2016, originally read:

(2) **!f, fo!!m,ving** a clarification discussion under subsection (1) or after receiving a report from the senior officer under section 11(4), a director does not acknowledge the alleged conflict of interest or apparent conflict of interest and does not take the actions set out under sections 9(1) to 9(7), the board must

Amended June 23, 2016, to:

(2) **If, following** a clarification discussion under subsection (1) or after receiving a report from the senior officer under section 11(4), a director does not acknowledge the alleged conflict of interest or apparent conflict of interest and does not take the actions set out under sections 9(1) to 9(7), the board must

- (3) Where the senior officer referred to in subsection (1) or (2) has a conflict of interest or an apparent conflict of interest due to their relationship to the director who is alleged to have not fully disclosed their conflict of interest or apparent conflict of interest, the report should be provided to the Chair of the Tla'amin Entity.
- (4) The senior officer or the Chair of the Tla'amin Entity, as the case may be, must make such enquiries as they consider necessary into any matter arising under subsections (1) and (2), and if the senior officer, or the Chair of the Tla'amin Entity, is of the opinion that the director is in violation of this Regulation, the senior officer, or the Chair of the Tla'amin Entity, must report the matter to the Executive Council and the board at the next board meeting, and the procedures set out in sections 10(2) to 10(5) must be followed.
- (5) After receiving a report under subsection (4), the Executive Council must make such enquiries as it considers necessary to determine whether a director participated in a decision on a matter where the director had a conflict of interest or an apparent conflict of interest and, if in the opinion of the Executive Council, the director's participation in the decision had an impact on the outcome, then the decision must be nullified and the board must reconsider the matter in accordance with the Law and this Regulation, except where it is not possible or reasonable to do so due to the passage of time or other reasonable limitations,
- (6) If the Executive Council is of the opinion that a director, by having a conflict of interest or an apparent conflict of interest, has violated this Regulation to the benefit of their private interests, the Executive Council may impose penalties on the director, including
 - (a) suspension of director duties, authorities and/or benefits;
 - (b) ordering the director to pay restitution to the Tla'amin Entity; and
 - (c) ordering the director to pay a fine of a maximum of \$5,000 to the Tla'amin Entity.
- (7) Any determination made and penalties imposed by the Executive Council under subsection (6) must be recorded in the minutes of the Executive Council meeting.
- (8) If the Executive Council is of the opinion that a director, by having a conflict of interest or an apparent conflict of interest, has contravened this Regulation to the benefit of their private interests, the Executive Council must direct the senior officer of the applicable Tla'amin Entity to post a public notice of the details of the determination for a period of not less than 20 business days as soon as practicable after the contravention was determined.

Gifts and benefits

12. (1) A gift or benefit must not be accepted by a director, or the director's spouse or dependent as a result of their relationship to the director, if it might reasonably be seen to have been given to influence the director in the exercise of their powers or performance of the their duties or functions.
- (2) Despite subsection (1), a gift or benefit may be accepted if the gift or benefit
 - (a) would be considered within
 - (i) normal protocol exchanges or social obligations associated with the director's office,

- (ii) normal exchanges common to business relationships, or
- (iii) normal exchanges common at public cultural events of the Tla'amin Nation;
and
- (b) does not, when combined with any other gifts received from the same individual or entity during the previous 12 months, amount to a value of more than \$250.

PART 4 - PROCEDURES FOR OFFICERS AND EMPLOYEES

Disclosure of interests

13. (1) An officer of a Tla'amin Entity must complete a Tla'amin Entity Conflict of Interest Disclosure Form and submit it to the senior officer, or in the case of a senior officer, the Chair of the Tla'amin Entity.
- (2) An officer of a Tla'amin Entity must file an Tla'amin Entity Conflict of Interest Disclosure Form under subsection (1) at the following times:
 - (a) within 20 business days of being hired; and
 - (b) as soon as practical after a material change in the information previously disclosed.
- (3) If an officer or employee of a Tla'amin Entity believes they have a conflict of interest or an apparent conflict of interest, the officer or employee must
 - (a) disclose the circumstances in writing as soon as practical to the senior officer or, in the case of the senior officer, to the Chair of the Tla'amin Entity; and
 - (b) refrain from participating in any discussions or decision-making respecting the circumstances of the conflict of interest or apparent conflict of interest until advised by the senior officer or the Chair of the Tla'amin Entity, as the case may be, on actions to be taken to avoid or mitigate the conflict or apparent conflict.

Enforcement and reporting

14. (1) If a director or employee of a Tla'amin Entity reasonably believes that an officer or employee of the Tla'amin Entity has a conflict of interest or an apparent conflict of interest, or is in violation of this Regulation, the individual must immediately report the matter to the senior officer, or in the case of the senior officer, to the Chair of the Tla'amin Entity. *[Amended June 23, 2016]*⁵

⁵ The subsection enacted on April 5, 2016, originally read:

(1) If a director or employee of a Tla'amin Entity reasonably believes that an officer or employee of the Tla'amin Entity has a conflict of interest or an apparent conflict of interest, or is in violation of this Regulation, the individual must ~~immediately~~ report the matter to the senior officer, or in the case of the senior officer, to the Chair of the Tla'amin Entity.

Amended June 23, 2016, to:

(1) If a director or employee of a Tla'amin Entity reasonably believes that an officer or employee of the Tla'amin Entity has a conflict of interest or an apparent conflict of interest, or is in violation of this Regulation, the individual must **immediately** report the matter to the senior officer, or in the case of the senior officer, to the Chair of the Tla'amin Entity.

- (2) If an individual reasonably believes that an officer or employee of a Tla'amin Entity is in violation of this Regulation, they may report the matter to the senior officer, or if the report is in relation to the senior officer, the report should be made to the Chair of the Tla'amin Entity.
- (3) The senior officer must make such enquiries as they consider necessary into any matter arising under subsections (1) and (2), and if the senior officer is of the opinion that the employee is in violation of this Regulation, the senior officer must take disciplinary action, the form of which will be at the discretion of the senior officer.
- (4) If the report under subsection (2) is made in relation to a senior officer, the Chair of the Tla'amin Entity, as applicable, must make such enquiries as they consider necessary into any matter arising under subsections (1) and (2), and if the Chair of the Tla'amin Entity is of the opinion that the senior officer is in violation of this Regulation, the Chair of the Tla'amin Entity must report the matter to the board.
- (5) If the board receives a report under subsection (4), it must make such enquiries as they consider necessary into any matter arising under subsections (1) and (2), and if the board is of the opinion that the senior officer is in violation of this Regulation, the board must take disciplinary action, the form of which will be at the discretion of the board.
- (6) Any decision made by and any disciplinary actions to be taken by the board in relation to the senior officer under subsection (5) must be recorded in the minutes of the board meeting.

Outside employment

15. The board of a Tla'amin Entity must establish policies and procedures or provide direction that would specify when

- (a) an officer or employee of the Tla'amin Entity is permitted under their terms of employment to have outside employment, contracts or business interests; and
- (b) the officer or employee must disclose any outside employment or business interests in writing.

Gifts and benefits

- 16. (1)** An officer or employee of a Tla'amin Entity or a spouse or dependent of an officer or employee of a Tla'amin Entity must not accept a gift or benefit that might reasonably be seen to have been given to influence the officer or employee in the exercise of their powers or performance of their duties or functions.
- (2) Despite subsection (1), a gift or benefit may be accepted if the gift or benefit
- (a) would be considered within
 - (i) normal exchanges common to business relationships, or
 - (ii) normal exchanges common at public cultural events of the Tla'amin Nation; and
 - (b) does not, when combined with any other gifts received from the same individual or

entity during the previous 12 months, amount to a value of more than \$250.

PART 5 - PROCEDURES FOR CONTRACTORS AND AGENTS

Disclosure of interests

17. If a contractor or agent believes they have a conflict of interest or an apparent conflict of interest, they must

- (a) disclose the circumstances in writing as soon as practical to the senior officer; and
- (b) refrain from participating in any discussions or decision-making respecting the circumstances of the conflict of interest or apparent conflict of interest until advised by the senior officer on actions to be taken to avoid or mitigate the conflict or apparent conflict.

Enforcement and reporting

- 18.** (1) If a director or employee reasonably believes that a contractor or agent has a conflict of interest or an apparent conflict of interest, or is in violation of this Regulation, the individual must immediately report the matter to the senior officer.
- (2) If an individual reasonably believes that a contractor or agent is in violation of this Regulation, they may report the matter to the senior officer.
- (3) A senior officer must make such enquiries as they consider necessary into any matter arising under subsections (1) and (2), and if the senior officer is of the opinion that the contractor or agent is in violation of this Regulation, the senior officer must take disciplinary action to their discretion.

Gifts and benefits

19. A contractor or agent, or a member of their immediate family, must not accept a gift or benefit that might reasonably be seen to have been given to influence the contractor or agent in the exercise of their powers or the performance of their duties or functions with the Tla'amin Entity. *[Amended June 23, 2016]*⁶

⁶ Amended June 23, 2016. A comma was added:
 (1) after the first occurrence of the word “agent”; and,
 (2) after the word “family”.

Print name

TLA'AMIN ENTITIES CONFLICT OF INTEREST REGULATION

- i. Names of spouse, dependents and immediate family members:
(children, siblings, parents, grandparents, grandchildren)

- ii. Employer of spouse, and any other offices and directorships held by spouse:

- iii. Employer of dependents, and any other offices and directorships held by dependents (if any):

- iv. Corporations or other legal entity of which I and/or my spouse/dependents beneficially own, directly or indirectly, more than 10% of the voting rights: *[Amended June 23, 2016]*⁷

- v. Any trust or estate in which I and/or my spouse/dependents have a substantial beneficial interest or for which I serve as a trustee:

- vi. Any real property I and/or my spouse and dependents own within the traditional territory of the Tla'amin Nation or that may be impacted by any decision by the Tla'amin Nation or any of the Tla'amin Entities:

Signature

Date

Print name

Note: Please fill in "not applicable" rather than leaving a blank.

⁷ Amended June 23, 2016. The reference to "20%" was changed to "10%".