

# MARLIN GLOBAL LTD

---

## POLICY ON CONFLICTS OF INTEREST



Prepared by: Katherine Price

Date: January 2008

---

## INTRODUCTION

---

Marlin Global is an investment company listed on the New Zealand stock exchange which invests in growth companies based outside of New Zealand and Australia.

On occasion, conflicts of interest for directors may arise, perhaps as a result of a director of Marlin Global Limited also being associated with;

- one of the portfolio companies of Marlin Global Limited; or
- a supplier to Marlin Global Limited; or
- a regulatory or other authority that may have an interest in Marlin Global Limited or its subsidiaries.

This policy seeks to outline the process to be adopted for identifying conflicts of interest and the actions that should be taken.

It does not seek to form policy on how to ensure directors are not considered 'insiders' from an insider trading point of view or any other conflicts.

---

## WHAT IS A CONFLICT?

---

In determining whether a director has a conflict of interest, they should be guided by the definition of “interested” in the Companies Act 1993.

**“Section 139  
Meaning of “interested”—**

- (1) Subject to subsection (2) of this section, for the purposes of this Act, a director of a company is interested in a transaction to which the company is a party if, and only if, the director—
- (a) Is a party to, or will or may derive a material financial benefit from, the transaction; or
  - (b) Has a material financial interest in another party to the transaction; or
  - (c) Is a director, officer, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction, not being a party or person that is—
    - (i) The company's holding company being a holding company of which the company is a wholly-owned subsidiary; or
    - (ii) A wholly-owned subsidiary of the company; or
    - (iii) A wholly-owned subsidiary of a holding company of which the company is also a wholly-owned subsidiary; or
  - (d) Is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, the transaction; or
  - (e) Is otherwise directly or indirectly materially interested in the transaction.
- (2) For the purposes of this Act, a director of a company is not interested in a transaction to which the company is a party if the transaction comprises only the giving by the company of security to a third party which has no connection with the director, at the request of the third party, in respect of a debt or obligation of the company for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security.”

However, conflicts or potential conflicts of interest may arise outside this definition, it is not exhaustive.

---

## **IDENTIFYING CONFLICTS**

---

It is the responsibility of each director to identify any real or potential conflicts of interests.

Where a director suspects they may be conflicted or may be perceived as such, they should declare their interest and notify the Chairman of the Board immediately. Where the Chairman is conflicted he/she should notify all other members of the Board immediately.

The Chairman, after consultation with the relevant director, will determine whether a conflict exists. Where the Chairman is potentially conflicted, all directors other than the Chairman will determine whether a conflict exists by majority vote.

Where a director identifies what they believe may be a conflict of interest for another director, they should discuss that with the relevant director and notify the Chairman.

---

## **DEALING WITH CONFLICTS OF INTEREST**

---

When a director has a conflict of interest they must formally notify the Board and make an entry in the Interests Register of the Company (refer Appendix I : Section 140 of the Companies Act 1993 for form of disclosure).

The conflicted party must abstain from voting on any issues relating to the transaction in which they are interested (refer Appendix I: Listing Rules 3.4.3 and 3.4.4). The director should refrain from participating in any discussion in relation to the transaction.

There may be times where involvement or the hearing of the Board discussion itself will create a real or perceived conflict. In that case the conflicted party should excuse themselves from any meeting until the discussion is over. The obligation to excuse themselves rests with each Board member.

## **APPENDIX I**

*Marlin Global's Constitution incorporates all provisions of the NZX Listing Rules (para 3.1).*

*Section 27 of the Companies Act 1993 means that unless there is an express provision in the Constitution negating or modifying the Act then the Act's provisions will apply.*

### **Applicable Provisions: Companies Act 1993:**

#### **Section 140(1)**

##### **Directors must disclose their interests**

*As soon as a Director becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, then unless the Act provides otherwise, that Director must disclose that interest in accordance with the Act, specifically:*

*Where a director has an interest in any transaction or proposed transaction with the company or is otherwise conflicted:*

- (1) The director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and disclose to the board of the company—*
  - (a) If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or*
  - (b) If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.*
  
- (1A) A director of a company is not required to comply with subsection (1) if—*
  - (a) The transaction or proposed transaction is between the director and the company; and*
  - (b) The transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.*

#### **Section 140(3)**

##### **Failure to disclose does not affect validity of transaction**

*Any failure by a Director to comply with section 140(1) of the Act does not affect the validity of a transaction entered into by the Company or the Director. However, the transaction may be avoided under section 141(1) of the Act.*

#### **Section 141(1)**

##### **Company may avoid transaction if Director interested**

*Where the Company enters into a transaction in which a Director is interested, the Company may avoid that transaction in accordance with the Act.*

### **Applicable Provisions: NZX Listing Rules**

*Para 3.3 of Marlin Global's Constitution states directors must not cast a vote if prohibited from doing so by the Listing Rules.*

#### **Rules 3.4.3 and 3.4.4**

##### **Interested Director must not vote**

*A Director of the Company who is interested in a transaction entered into, or to be entered into, by the Company must not vote on a matter in which that Director is interested or be counted in the quorum for the purposes of consideration for that matter, except that:*

*a Director may vote in respect of and be counted in the quorum for the purposes of a matter relating to that transaction in which that Director is interested if the matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity under section 162 of the Act.*