



# Director Code of Conduct Policy

Version 1  
May 13, 2014

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## Record of Updates

Version	Date	Summary of Update
1	May 13, 2014	Original

## I. GENERAL POLICIES

### A. Background to Policy

- i. AMVIC is a society incorporated under the *Societies Act*. Pursuant to its By-Laws, the affairs of AMVIC are managed and directed by the directors of AMVIC (the “directors”). The directors and officers, by virtue of their position of control over the affairs of AMVIC, stand in fiduciary relationship to AMVIC. Consequently, AMVIC directors and officers must have regard to the requirements of the common law governing fiduciary relationships where conflicts of interest arise.
- ii. Directors and officers must be mindful that their actions will be subject to public scrutiny. AMVIC has been established as a management board under the *Fair Trading Act* and has been entrusted to carry out powers, duties and responsibilities under the Act, the Automotive Business Regulation and the Delegation Agreement with Service Alberta. Directors and officers must discharge these powers, duties, and responsibilities in a manner which is consistent with and which furthers the public interest.
- iii. AMVIC has adopted a set of guidelines, which will assist the directors and officers to discharge their duties in accordance with their responsibilities as fiduciaries and as responsible stewards of a public undertaking. The guidelines are attached to and form part of this policy statement.

### B. Requirement of Fiduciaries at Common Law

- i. The common law imposes upon fiduciaries the duty to act in utmost good faith towards their beneficiaries. Fiduciaries must act toward their beneficiaries with a heightened sense of loyalty and fidelity. Fiduciaries must act in a manner consistent with the best interests of their beneficiaries in all matters related to the undertaking of trust and confidence. Fiduciaries must scrupulously avoid placing themselves in a position of conflict of interest.
- ii. The general rule regarding conflicts of interests is that no one who has duties of a fiduciary nature to perform is allowed to enter into engagements in which he has or can have a personal interest conflicting with the interests of those whom he is bound to protect. Even where the fiduciary acts in good faith, the foregoing restrictions apply. A fiduciary cannot place his own interests ahead of those of his beneficiary, even in situations where the beneficiary benefits from the arrangement. A fiduciary cannot benefit personally from any opportunity, which comes to his awareness by way of fiduciary position. A fiduciary must not use any aspect of the beneficiary’s property for personal gain. More specifically, a fiduciary

must not use for personal benefit beneficiaries assets, goods, information or opportunities.

- iii. Fiduciaries must not use their position to benefit persons closely associated with them. Where a benefit is conferred upon a person with whom the fiduciary is closely associated, the fiduciary benefits indirectly. Regard must be had to all of the surrounding circumstances to determine whether a person is associated with a fiduciary. Persons sharing business relations or family relations will in most instances be characterized as associates of the fiduciary. In some instances, close personal relations will also give rise to an association between the fiduciary and the person. The key issue in determining whether a fiduciary is associated with another person is whether the fiduciary's ability to represent the interests of the beneficiary is or appears to be compromised as a result of the fiduciary's relationship with the third party.

### **C. Application of General Fiduciary Principles to AMVIC Directors and Officers**

- i. Directors and officers stand in a fiduciary relationship with AMVIC. Directors and officers must not use their position to gain benefit personally, whether such benefit accrues to them directly or indirectly. Directors and officers must not use their position to benefit persons related to them or with whom they are closely associated, such as business partners.
- ii. Where a conflict arises in relation to a director or officer, the affected director or officer must declare a conflict, fully disclose his interest in the transaction, and refrain from voting upon this matter. Whether the transaction will be approved will be a matter for the Board to determine.
- iv. Directors and officers are encouraged not to make frequent use of the exceptions provided above. The general rule that AMVIC does not enter into transactions with directors or officers must be observed with minimal exceptions in order to ensure public confidence in AMVIC and its undertakings remains high.

### **D. General Fiduciary Responsibilities of Stakeholders Representatives**

- i. The Board of Directors (the "Board") has been structured so as to ensure the Board is composed of a diverse selection of individuals. Each individual director is expected to bring to the Board a set of viewpoints and experience that may not be experienced by his fellow directors. The diversity of viewpoints and experience at the Board adds strength and depth to Board decisions.

- ii. Directors must appreciate that while their appointment to the Board may be as a result of a particular organization, once appointed their loyalties are first and only to AMVIC.
- iii. Directors will be required to make decisions based on what they perceive to be the best interests of AMVIC. Although it is intended that directors will draw upon their experiences and views gained through their association with other organizations, it is not intended that directors serve as representatives of those associations on AMVIC. As directors, their loyalties are first and only to AMVIC.
- iv. Directors may find themselves in a position of conflict as a result of their associations with organizations having dealings with AMVIC. A conflict may arise where an organization seeks to enter into a transaction with AMVIC. Where a conflict arises, the affected director must declare the conflict, fully disclose any personal interest he may have in the transaction, and refrain from voting upon the matter. Whether the transaction will be approved will be a matter for the Board to determine.
- v. It would be inconsistent with their duties of loyalty and fidelity to AMVIC for a director to participate in a decision relating to a matter in which he has a conflict of interest. Participation by a director in any decisions related to a matter in which he has conflict could invalidate the decision and could result in embarrassment to both AMVIC and the affected organization. If the conflict is significant, public confidence in AMVIC could suffer.
- vi. Because the statutory regime under which the Board is established creates a stakeholder board and requires the Board to make decisions which impact those stakeholders, the directors are necessarily required by legislation to make decisions on some matters in which they may have a direct or indirect interest.

## II. CONFLICT OF INTEREST GUIDELINES

### A. Definitions

In these Guidelines,

- i. “affiliated organization” means any member of AMVIC;
- ii. “associated” means a relationship, transaction or connection such that the relationship, transaction or connection:
  - a. has the potential to affect, or give the appearance of affecting, the ability of the director or officer to act impartially on behalf of AMVIC in a transaction; or

- b. between AMVIC and the person would, or would be seen, to confer a direct or indirect benefit upon the director or officer.
- iii. “AMVIC” means the Alberta Motor Vehicle Industry Council;
- iv. “benefit” means a direct or indirect pecuniary or non-pecuniary advantage and includes the avoidance of a detriment, but does not include the prestige associated with the position of director or officer nor participation in activities or programs of AMVIC in which the public has an opportunity to participate;
- v. “Board” means the Board of Directors of AMVIC;
- vi. “Director” means a member of the Board of Directors of AMVIC;
- vii. “member organization” means any organization that becomes a member of AMVIC in accordance with the By-Laws of AMVIC;
- viii. “person” means an individual, corporation, association, partnership or organization;
- ix. “transaction” means an arrangement under which
  - a. AMVIC and another person agree to exchange value or services;
  - b. AMVIC confers a benefit on another person, or
  - c. AMVIC receives a benefit from another person.

## **B. Statement of Principles**

- i. It is AMVIC’s policy to comply with all applicable laws, rules and regulations. It is each director’s personal responsibility to adhere to the standards and restrictions imposed by those laws, rules and regulations.
- ii. Directors and officers should strive to identify and raise potential issues before they lead to problems, and should ask about the application of this Policy whenever in doubt. Any director or officer who becomes aware of any existing or potential illegal or unethical behaviour should promptly notify the Board Chair.
- iii. Directors and officers shall at all times act in accordance with and display utmost good faith towards AMVIC.
- iv. Directors and officers shall at all times act in accordance with and display a heightened sense of loyalty and fidelity to AMVIC.
- v. Directors and officers have an obligation to protect AMVIC’s assets, including opportunity, information and AMVIC’s name, and ensure their efficient use. All of AMVIC’s assets must be used only for legitimate purposes and not for personal use.

- vi. Directors and officers often learn confidential or proprietary information about AMVIC, its clients/customers, prospective clients/customers or other third parties. Directors and officers, during or after their tenure as a director or officer, must maintain the confidentiality of all information so entrusted to them, except when disclosure is authorized or legally mandated. Confidential or proprietary information includes, among other things, any non-public information concerning AMVIC, and any non-public information provided by a third party with the expectation that the information will be kept confidential and used solely for the purpose for which it was conveyed.
- vii. Directors and officers should endeavour to deal fairly with AMVIC's clients, service providers, suppliers, and employees. No director or officer should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any unfair dealing practice.

### **C. Prohibited and Permitted Transactions**

- i. Except in accordance with this policy, AMVIC shall not enter into transactions with a director where the director or officer may directly or indirectly benefit from the transaction.
- ii. AMVIC may enter into transaction with a director or officer if
  - a. the affected director or officer
    - 1. declares a conflict of interest in respect of the proposed transaction;
    - 2. discloses to the Board the full nature and extent of his interest in the proposed transaction and, to the extent that he is able, the interest of any related person in the proposed transaction; and
    - 3. establishes to the satisfaction of the Board that
      - (i) the proposed transaction is fair and reasonable to AMVIC, and
      - (ii) the proposed transaction would meet or exceed community expectations about the conduct of AMVIC; and
  - b. the Board approves the proposed transaction.
- iii. When authorizing a transaction under section II.C.ii, the Board may impose any conditions it deems necessary in the circumstances to protect AMVIC or to safeguard public confidence in AMVIC's undertakings.



- iv. For the purpose of section II.C.ii, the affected director or officer shall not participate in any decisions relating to the proposed transaction.
- v. For the purpose of section II.C.ii, the affected director or officer shall not be counted as part of the quorum making any decisions relating to the proposed transaction.
- vi. Where the Board approves a transaction under section II.C.ii, an entry shall be made into the minutes of the meeting confirming the approval of the transaction by the Board.

### **III.COMPLIANCE MONITORING AND WAIVERS OF THIS POLICY**

- A.** The Board of Directors has responsibility to monitor compliance with this Director Code of Conduct Policy.

### **IV.COMMITMENT**

- A.** To demonstrate our determination and commitment, AMVIC asks each director and officer to review the Policy periodically throughout the year. Take the opportunity to discuss with the Board Chair any circumstances that may have arisen that could be an actual or potential violation of this Policy.
- B.** Directors and officers are required to sign this Policy annually.

***I ACKNOWLEDGE that I have read and considered the AMVIC Director Code of Conduct Policy and agree, to the very best of my ability, to conduct myself at all times and in all circumstances in accordance with the AMVIC Director Code of Conduct Policy. Listed below are the names and addresses of those organizations, where I am currently a director or an officer or to whom I currently owe a fiduciary obligation, and which could currently be considered or perceived to be in a conflict of interest position with the AMVIC.***

<b><i>Name of Organization</i></b>	<b><i>Position Held</i></b>	<b><i>Address</i></b>
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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date