

ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL

Conflict of Interest Policy

1. **Background to Policy**

AMVIC is a society incorporated under the Societies Act. Pursuant to its bylaws, the affairs of AMVIC are managed and directed by the Directors of AMVIC. The Directors of AMVIC, by virtue of their position of control over the affairs of AMVIC, stand in a fiduciary relationship to AMVIC. Consequently, the Directors of AMVIC must have regard to the requirements of the common law governing fiduciary relationships where conflicts of interest arise.

The Directors of AMVIC are mindful that their actions will be subject to public scrutiny. AMVIC will have certain powers, duties and functions delegated to it by the Director of Fair Trading under the *Fair Trading Act*. The Directors of AMVIC will discharge these powers, duties, and functions in a manner which is consistent with and which furthers the public interest.

AMVIC has adopted a set of guidelines which will assist the Directors of AMVIC 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.

2. **Requirements of Fiduciaries at Common Law**

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.

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 restriction applies. 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 his 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 a beneficiary's assets, goods, information or opportunities.

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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.

3. Application of General Fiduciary Principles to AMVIC Directors

The Directors of AMVIC stand in a fiduciary relationship with AMVIC. The Directors must not use their position to gain benefit personally, whether such benefit accrues to them directly or indirectly. Directors must not use their position to benefit persons related to them or with whom they are closely associated, such as business partners.

These types of transactions, however, are exceptional and are not anticipated to arise with any frequency. Where they do arise, the affected Director must declare a conflict, fully disclose his interest 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.

Directors are discouraged from making frequent use of the exceptions provided above. The general rule is that: AMVIC does not enter into transactions with Directors or with related persons. This must be observed with minimal exceptions in order to ensure public confidence in AMVIC and its undertakings remains high.

4. General Fiduciary Responsibilities of Stakeholder Representatives

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

Directors must appreciate that while their appointment or election to the Board may be as a result of a particular organization, once appointed

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their loyalties are first and only to AMVIC.

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.

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,

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 they have a conflict of interest. Their participation in any decisions related to a matter in which they have a 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.

CONFLICT OF INTEREST GUIDELINES

Definitions

“Fiduciary”

–noun

1. A person to whom property or power is entrusted for the benefit of another.

–adjective

2. Of or pertaining to the relation between a fiduciary and his or her principal: *a fiduciary capacity; a fiduciary duty.*
3. Of, based on, or in the nature of trust and confidence, as in public affairs: *a fiduciary obligation of government employees.*

“AMVIC” means the Alberta Motor Vehicle Industry Council;

“affiliated organization” means any members of AMVIC;

“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

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ability of the Director 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.

“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 nor participation in activities or programs of AMVIC in which the public has an opportunity to participate;

“Board” means the Board of Directors of AMVIC;

“Director” means a member of the Board of Directors of AMVIC;

“member organization” means any organization that becomes a member of AMVIC in accordance with the bylaws of AMVIC;

“person” means an individual, corporation, association, partnership or organization; *“related person”* means a person who is associated with a Director.

“pecuniary” means of or pertaining to money

“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.

Statement of Principles

1. Directors shall at all times act in accordance with and display utmost good faith towards AMVIC.
2. Directors shall at all times act in accordance with and display a heightened sense of loyalty and fidelity to AMVIC.
3. Directors shall not use for personal gain any of AMVIC’s assets, goods, information or opportunities.
4. Directors shall not disclose any information which is confidential to AMVIC during or after their tenure as Directors except as may be authorized by AMVIC or required by law,

Prohibited and Permitted Transactions

5. Except in accordance with this policy, AMVIC shall not enter into transactions with a Director or a related person where the Director, or related person may directly or indirectly benefit from the transaction.

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6. AMVIC may enter into a transaction with a Director or related person if
 - (a) the affected Director
 - (I) declares a conflict of interest in respect of the proposed transaction;
 - (II) 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
 - (b) it is established 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
 - (c) the Board approves the proposed transaction.
7. When authorizing a transaction under section 6, the Board may impose any conditions it deems necessary in the circumstances to protect AMVIC or to safeguard public confidence in AMVIC's undertakings.
8. For the purposes of section 6, the affected Director shall not participate in any decisions relating to the proposed transaction.
9. For the purposes of section 6, the affected Director shall not be counted as part of the quorum making any decisions relating to the proposed transaction.
10. Where the Board approves a transaction under section 6, an entry shall be made into the minutes of the meeting confirming the approval of the transaction by the Board.