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# BOARD GUIDANCE ON EXTERNAL ENGAGEMENTS

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## INTRODUCTION

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Directors of Global Witness should be, and should be seen to be, working to protect our aims and best interests. The nature of our work means that we are particularly concerned with ensuring transparency and strengthening our values, so our board should be highly aware of and sensitive to potential conflicts of interest and to personal engagements that could damage our reputation.

This document sets out clear guidance to protect the independence of the organisation's key decision-making processes, to enable everyone to have confidence in our integrity, and to protect the reputation of Global Witness. It aims to strike a balance between recognising directors' other commitments and ensuring that any risks arising from them are appropriately considered.

This document provides guidance for board members of Global Witness (both non-executive and executive directors) on identifying the situations in which a current or potential relationship with another organisation might cause problems, and how to resolve them. It also provides guidance on similar considerations that should be taken into account during the due diligence process when evaluating the suitability of potential new board members. It does not cover conflicts of interest that do not relate to external engagements (such as the hiring of a family member to a GW role).

The document covers both conflicts of interest and issues that, while not technically a conflict of interest as laid out in Global Witness's articles of association, constitute a reputational risk. The same process (as laid out below) should be followed for both. Reputational risks are interpreted not just in the narrow sense of risks that might lead to unfavourable media coverage, but also in the wider sense of risks that might harm our credibility or our ability to work with partners, attract funding, influence advocacy and campaigning targets, and so on.

Global Witness's articles define a conflict as "a situation:

- i. in which a director has or can have a direct or indirect interest that conflicts or possibly may conflict with the interests (commercial, moral or ethical) of the company; or
- ii. where a director has a conflict of a duty of loyalty between that owed to the company and that owed to another organisation or person; or
- iii. a situation where a director, or persons closely connected or associated with them, or their actions or other associations will or may be reasonably considered (by the company) to be likely to bring the company into disrepute."

This document is in addition to the common understanding of conflicts, as outlined in the Companies Act 2006 (see annex A). It is meant to supplement good judgment, and board members should respect its spirit as well as its wording. The circumstances of each individual case will be carefully considered. However, in a situation where the integrity, reputation or good name of Global Witness is at risk, the board member in question may be required to resign from his or her post.

The terms 'conflict' and 'conflicted' are used below for simplicity to apply to all situations where the current or potential relationship of a Global Witness board member to an organisation might cause problems, even if the problems in question are technically only reputational and do not constitute a conflict of interest as defined in Global Witness's articles or in the Companies Act 2006.

## **GUIDELINES ON ASSESSING RISKS RELATED TO EXTERNAL ENGAGEMENT**

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These are guidelines only. Each case should be assessed on its own merits, so the proximity and severity ratings (and therefore the overall conflict score) may differ from the guidelines laid out in this document based on the specific circumstances involved. More fundamentally, the scoring process (and the support and advice of the leadership team) is intended to guide the board in reaching decisions about conflicts of interest and reputational risks (as well as providing some clarity to board members about future engagements and to those involved in the recruitment of new board members), but it does not remove the need for board members to exercise their judgement when considering the individual facts of a specific case and deciding how to deal with it.

Note that, while the guidelines below refer to organisations, similar principles apply for external engagements with individuals as for external engagements with organisations.

### **PROXIMITY**

The proximity score is designed to assess how closely connected a board member is to a conflicted organisation.

Conflicts that involve close family members or close professional associates should be considered as well as those directly involving board members (see examples below for more detailed guidance).

<b>Rating</b>	<b>Score</b>	<b>Definition</b>	<b>Examples</b>
Very low	1	Incidental connection to a conflicted organisation	Client (e.g. bank account holder), small investor (e.g. owns shares < £5k directly or via a fund)
Low	2	Passive connection to a conflicted organisation	Shareholder deriving > 25% of personal or family income or wealth from those shareholdings
Medium	3	Active connection to a conflicted organisation	Employee, consultant, advisor, recipient of gifts or hospitality, loan or grant funder
High	4	Major role at a conflicted organisation	Senior manager, non-executive director (paid or unpaid), shareholder with equity stake over 1%
Very high	5	Leader or owner of a conflicted organisation	Founder, chair, CEO, SMT member, partner, shareholder with equity stake over 10%

### **Examples of variations based on individual circumstances**

- A board member who is a retail customer of a conflicted or actively targeted organisation (for example, an HSBC bank account holder or a Shell customer) does not need to declare this.
- The scoring of an investor or funder in a conflicted organisation should be based on the extent of the interest, so that a larger financial interest may well be scored higher than 2 (low).
- If the conflict concerns the immediate family member of a board member rather than the board member themselves, it should still go through this process, although it may be appropriate depending on the circumstances to reduce the proximity score compared to the score that would have been assigned if the conflict concerned the board member themselves.
- Conflicts that relate to close professional (rather than familial) relationships should also be considered, such as a board member working closely on an unrelated issue with someone who has a leadership role in a conflicted organisation, although potentially with a reduced score.

- If the relationship with the conflicted organisation is or was entirely before or entirely after the period during which the conflict applied, consider reducing the score. However, a previous relationship with an organisation that was conflicted at the time of the relationship should be considered as important as an ongoing relationship, and future relationships that are more likely than not to come about should also be considered equally important.

## SEVERITY

Global Witness defines a number of sectors of the economy as ‘conflicted sectors’ whose aims and/or activities are fundamentally incompatible with its mission and values. These are tobacco, fossil fuels, logging, timber and paper, mining, nuclear power, agribusiness, the arms trade and involvement with products or services that present significant threats to the security of human rights and environmental defenders. In addition, we apply a ‘red flag’, irrespective of sector, to companies that are breaking international sanctions, demonstrate a pattern of poor governance, or have records of tax evasion or aggressive tax avoidance, money laundering or poor financial transparency. Certain portfolios within the financial services sector may also be considered a conflict, particularly where portfolios are heavily invested in the above sectors. Political parties may also be considered to be conflicted if they promote policies or values that are directly opposed to our objectives or values, although a board member’s involvement with a political party would not automatically be seen as a conflict of interest or as a reputational risk.

The severity score is designed to assess how seriously conflicted the organisation is with our aims and values. The definitions below relate to the organisation (not to the individual’s role in it). Note that scores one to three relate to organisations that are ‘indirectly conflicted’ in that they have a relationship with a conflicted organisation without necessarily working in a conflicted sector themselves or having a ‘red flag’ applied to them. Each case should be considered according to its own merits, and there may well be cases where a higher score than that suggested below is applied to an ‘indirectly conflicted’ organisation because of the specific risks identified.

Rating	Score	Definition	Examples
Very low	1	Supplies services to one or more organisations in conflicted sectors or with a red flag	Various legal and other professional services firms
Low	2	Funds or invests in one or more organisations in conflicted sectors or with a red flag	Various banks and investment houses
Medium	3	Represents one or more organisations in conflicted sectors or with a red flag	Trade associations, lobbying firms and so on
High	4	Organisation in conflicted sector or with red flag	Oil majors and so on
Very high	5	Current, recent or potential target of GW investigation or campaign	Shell, HSBC, Goldman Sachs, JP Morgan and so on

### Examples of variations based on individual circumstances

- If an indirectly conflicted organisation works with one or more organisations that is a potential, current or previous target of a Global Witness investigation or campaign (rather than simply working in a conflicted sector or having a red flag), consider increasing the severity score.
- If the board member’s relationship is with an indirectly conflicted organisation and yet they are not personally involved with it (for example, they work for an organisation that provides

services to a directly conflicted organisation but they themselves work in an entirely separate area and therefore do not), consider reducing either the proximity or the severity score.

- If an organisation with a score of five that was a previous target of a Global Witness investigation or campaign has since changed its stance or activities such that it would no longer be targeted by Global Witness, and the conflicted relationship did not begin until after this change took place, consider reducing the severity score if the circumstances support this change.
- Organisations with a score of one to three (that are directly linked to conflicted organisations) will need to be scored with particular attention to the specifics of the case. For example, the seniority of a lawyer in a firm that provides services to conflicted organisations may have an impact on the proximity score, while the nature of the services provided by the firm to conflicted organisations may have an impact on the severity score (with, for example, general commercial advice being ranked lower than specific advice related to conflicted issues, or there being a difference between representing the plaintiffs and the defendants in defamation actions). It is not expected that Global Witness could or should score every new client that is taken on by a company (such as a law firm) with which a board member is connected (e.g. as a partner).

## MAPPING

The conflict is plotted on a 'heat map', using the formula  $score = (proximity \times severity) + severity$ .

		Severity					
		Very low	Low	Medium	High	Very high	
		1	2	3	4	5	
Proximity	Very low	1	2	4	6	8	10
	Low	2	3	6	9	12	15
	Medium	3	4	8	12	16	20
	High	4	5	10	15	20	25
	Very high	5	6	12	18	24	30

## Examples of how hypothetical cases could be scored

- Employee of professional, legal or financial services firm whose clients include organisation(s) in conflicted sector(s): medium proximity (3), very low severity (1), overall score 4 (8 if organisations include GW targets or if relationship to those clients is considered problematic)
- Board member of trade body whose members include organisation(s) in conflicted sector(s): high proximity (4), medium severity (3), overall score 15 (20 if organisations include GW targets)
- Significant personal investor in organisation(s) in conflicted sector(s): low proximity (2), high severity (4), overall score 12 (15 if organisations include GW targets)
- Lawyer acting for war criminals: medium proximity (3), high severity (4), overall score 16

## **PROCESS FOR IDENTIFYING, ASSESSING AND RESOLVING CONFLICTS**

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### **Identifying and flagging a potential conflict**

As soon as a potential conflict has been identified, it should be flagged in line with the process below, rather than waiting until the next quarterly board meeting. A potential conflict should be flagged well before it materialises. For example, a board member who is considering a new job, board position or investment should flag this at the point at which they start considering it, rather than waiting until they are about to accept it or have already done so. Board members should therefore ensure that they are familiar with the details of this policy when considering new appointments or other external engagements that might be affected by it.

Board members should also certify that they do not have any previously undeclared conflicts at the start of every quarterly board meeting (but should not wait until the next meeting to declare one).

Ideally, a potential conflict involving a board member should be flagged by the person involved. Potential conflicts can also be flagged by other board members, staff members, or third parties.

A board member who wishes to flag a potential conflict relating to themselves or another board member should first approach the board chair, who should immediately share it with the rest of the board members and simultaneously pass it onto the CEO and leadership team for initial analysis.<sup>1</sup> A staff member or third party who wishes to flag a potential conflict relating to a board member should approach the CEO, who should notify the board chair and analyse it with the leadership team. Staff members may instead approach HR in confidence initially.

For the avoidance of doubt, this process covers potential reputational risks as well as conflicts of interest. It includes all risk and conflicts, however low they may appear to score on the heat map.

### **Assessing a potential conflict**

The leadership team should carry out the initial assessment of a potential conflict. They should use their discretion based on the specifics of the case to decide whether and how to consult with staff to help them to assess the conflict (for example, whether to engage with all staff members or team leaders or those with relevant expertise, and whether to share full information about the situation or simply to ask for feedback about risks related to the organisation in question).

Within a week of the conflict being flagged to them, the leadership team should send the board chair a short document setting out the proposed scoring and mapping of the conflict, with supporting analysis, and (if appropriate) a recommendation as to the best way to resolve the conflict, such as:

- Asking the board member to make certain changes in relation to the conflict that would reduce its proximity or severity. For example, a new consulting or employment role with an organisation that works with conflicted organisations could be circumscribed to ensure that the board member themselves is not asked to work directly with any of those organisations.
- Taking measures to mitigate the specific risks posed by the conflict. For example, making changes internally to reduce the impacts of the conflict on Global Witness, developing a

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<sup>1</sup> Our articles state (clause 19.1) "a director must declare the nature and extent of any interest or Conflict, direct or indirect, which he or she has in a proposed transaction or arrangement with the company or in any transaction or arrangement entered into by the company, which has not previously been declared, in accordance with the Act and the articles."

communications strategy in case the conflict attracts external attention, or engaging proactively with staff, partners, funders or other stakeholders to minimise the risks.

- Recommending that, because the risks posed by the conflict are too great and cannot be mitigated to an acceptable level, the board member is advised that they cannot continue to serve on the Global Witness board if the conflict materialises.
- Recommending that the conflict can be authorised because it scores sufficiently low on the heat map to be manageable without any changes or mitigation measures.

## **Resolving a potential conflict**

The board chair should call an extraordinary board meeting to discuss and resolve the conflict. This meeting should be quorate, as specified in the articles<sup>2</sup>. It should take place within a week of the document above being shared with the board chair by the leadership team. The board should take this document into account when discussing the issue and making a decision, but does not have to agree with its analysis or recommendations. The board can reach a decision on the conflict by a simple majority vote if needed, as laid out in the articles, with the board chair having a casting vote. The conflicted director should not take part in the board's discussion or decision. The articles provide more details (at clause 19 – see annex B below) as to the circumstances in which the board may authorise a conflict.

The board should communicate its decision back to the leadership team in writing within three days of the meeting. This communication should include a detailed explanation of any differences of opinion between the board's assessment of the conflict scoring, mitigation measures and/or resolution and the assessment provided by the leadership team.

In situations where the leadership team recommends that a low-scoring conflict can be authorised (with or without mitigation measures in place), the board chair can decide to seek the approval of the rest of the board members (excluding the conflicted director) by email, rather than by calling an extraordinary meeting. An authorisation by email will require the written approval of a majority of board members (excluding the conflicted director), with the board chair having a casting vote.

The presumption is that any potential conflict that is scored by the board as 'light red' (16-20) will not be authorised unless significant mitigation measures can be put in place, while those that are scored as 'dark red' (over 20) will not be authorised under any circumstances. As outlined above, the scoring criteria and heat map are intended as a guide for discussion but not as a substitute for judgement and decision-making based on the individual facts of the case, and there may well be potential conflicts that the board decides cannot be authorised due to the level of risk involved, despite the fact that the individual circumstances do not automatically trigger a high score.

A board member is presumed to be conflicted from the point at which they engage in the act that creates the conflict.

If the potential conflict involves the board chair, another board member should be nominated by the rest of the board to assume the functions of the board chair outlined above, and the board chair should of course be recused from any further decision-making related to this case.

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<sup>2</sup> The articles state (clause 14.1) that meetings must be called with at least seven working days' notice, so the board chair will in practice need to call the extraordinary board meeting as soon as the conflict has been passed to the leadership team for consideration. Clause 16 states that at least three directors must take part in a meeting for it to be considered quorate, including at least one executive director (founder), unless there are fewer than three directors in office.

## **Due diligence for prospective new board members**

Where board positions are openly advertised and/or individuals are directly contacted about them, a summary of this policy (based on the scoring criteria and matrix) should be made available so that candidates with obvious conflicts do not apply in the first place. It is particularly important that potential, current or historic conflicts are considered and discussed when existing board members are talking to individuals in their own networks about board vacancies at Global Witness.

The board nomination and recruitment committee should task the leadership team with ensuring that a basic due diligence process is carried out for all candidates who are shortlisted for interview. This process should be based on the scoring criteria and matrix outlined above, and should take account of any potential mitigation measures that might reduce the risks presented by any conflicts. The presumption is that any candidates with conflicts that are assessed as light red or dark red (with a score of 16 or above) should not be considered for appointment to the board.

The leadership team should ensure that a detailed due diligence process is carried out on any selected candidates before they are formally approved by the board members to join the board. Again, this process should be based on that outlined above, including analysis of historic conflicts, but there is likely to be more time available to consider potential whether conflicts that are assessed as 'borderline' (amber, scoring 10 to 15) can be mitigated to the extent that they are judged to be acceptable and can be authorised by the board prior to appointment. However, no due diligence process will be able to pick up every conceivable potential risk connected to a new board member.

New board members should be made aware of this policy before they formally join the board, in case they have plans that might lead to a new conflict but that have not been disclosed to the nomination and recruitment committee, and so that they can continue to abide by the policy throughout their tenure as Global Witness board members. New board members should also be given an orientation session on this policy shortly after they join the board, and refresher sessions should be run periodically for existing board members to ensure ongoing clarity about the policy.

## **ANNEX A: LEGAL DUTIES OF DIRECTORS IN RELATION TO CONFLICTS OF INTEREST**

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Directors are subject to the provisions of the Companies Act 2006 in relation to conflicts of interest and how they are managed. Specifically, directors have a duty to:

- Exercise independent judgment
- Avoid conflicts of interest
- Not accept benefits from third parties
- Declare any interest in a proposed transaction or arrangement
- Declare any interest in an existing transaction or arrangement

Liability for this lies personally with each director, and not with the company. Non-compliance is a serious breach of director duties, and could give rise to criminal action.

If the board exceeds its constitutional powers in entering into a transaction with a director (or someone connected to a director), the transaction may be declared void. Where a director fails to declare an interest in a proposed transaction, the director may be liable to a fine. The directors involved in the transaction, including those who authorised it, may be required to return any gains to the company or to make good any losses incurred.

Company legislation imposes limitations and prohibitions on certain conflicts of interest. For example, sections 190 to 196 of the Companies Act 2006 limit substantial property transactions between companies and their directors and people connected with the directors if the value is greater than £5000 or 10% of the company's net assets. If the total value of the property is greater than £100,000, the transaction requires the prior approval of the membership by a resolution in a general meeting.



## **ANNEX B: CONFLICTS OF INTEREST CLAUSE FROM ARTICLES OF ASSOCIATION**

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### **19. Directors' Conflicts of interest**

19.1. A director must declare the nature and extent of any interest or Conflict, direct or indirect, which he or she has in a proposed transaction or arrangement with the company or in any transaction or arrangement entered into by the company, which has not previously been declared, in accordance with the Act and the articles.

19.2. The directors may, in accordance with the requirements set out in this article, authorise any interest or Conflict proposed to them not otherwise authorised by virtue of other provision in these articles, by any director, including an interest or Conflict which would if not authorised involve a director (an Interested Director) breaching his duty under section 175 of the Act to avoid conflicts of interest.

19.3. Any authorisation under this article 19 shall be effective only if:

19.3.1. the Interested Director is absent from the part of the meeting at which there is discussion of the Conflict;

19.3.2. any requirement as to the quorum for consideration of the approval is met without counting the Interested Director (taking into account article 16.2); and

19.3.3. the board (aside from the Interested Director) consider it in the interests of the company to authorise the conflict of interests in the circumstances.

19.4. Any authorisation of an actual or potential Conflict under this article 19 may (whether at the time of giving the authorisation or subsequently) be on any terms, conditions that the board see fit. The Interested Director shall be obliged to conduct themselves in accordance with such provisions.

19.5. The directors may revoke or vary such authorisation at any time, but this shall not affect anything done by the Interested Director prior to such revocation or variation in accordance with the terms of such authorisation.

19.6. A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors in accordance with these articles or by the company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

19.7. If a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.

19.8. If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.