

# Directors' Code of Conduct and Ethics

## VIA Rail Canada

### IN BRIEF:

- This Code applies to: *All Directors of VIA Rail Canada Inc.*
- Under the authority of: *Corporate Secretariat*
- Summary: *This Code is intended to document the principles of conduct and ethics to be followed by VIA Rail Canada Directors. Compliance with this Code and with both the letter and the spirit of the law is mandatory for all Directors of VIA Rail Canada Inc.*
- Revised on: *2018/03/20*
- To be reviewed and signed annually by ALL present Directors.

### 1. INTRODUCTION

- (a) The fundamental relationship between each director and VIA Rail Canada ("VIA Rail" or the "Corporation") is one of trust; essential to trust is a commitment to honesty and integrity. Ethical conduct within this relationship imposes certain obligations.
- (b) This Code of Conduct and Ethics (the "Code") is intended to document the principles of conduct and ethics to be followed by VIA Rail Canada directors. A separate Code of Conduct is applicable to officers and employees of the Corporation.
- (c) This Code is a companion document to the VIA Rail's Terms of Reference for a Director which is attached hereto as appendix A.
- (d) The Board of Directors (the "Board") is responsible for monitoring compliance with the code.

### 2. COMPLIANCE WITH THE LAW

- (a) VIA Rail directors must act at all times in full compliance with both the letter and the spirit of all applicable laws.
- (b) In his or her relationship with VIA Rail, no director shall commit or condone an unethical or illegal act.

- (c) Directors are expected to be sufficiently familiar with any legislation that applies to their work to recognize potential liabilities and to know when to seek legal advice. If in doubt, directors are expected to ask for clarification.
- (d) Falsifying the record of transactions is unacceptable.
- (e) VIA Rail is continually under public scrutiny. Therefore, directors must not only comply fully with the law, but must also avoid any situation which could be perceived as improper or indicate a casual attitude towards compliance.

### 3. CONFLICTS OF INTEREST

- (a) In general, a conflict of interest exists for directors who use their position at VIA Rail to benefit themselves, friends or family members.
- (b) A director must not use his or her position with VIA Rail to pursue or advance the director's personal interests, the interests of a related person<sup>1</sup>, director's business associate, corporation, union or partnership, or the interests of a person to whom the director owes an obligation.
- (c) A director must not directly or indirectly benefit from a transaction with VIA Rail over which a director can influence decisions made by the Corporation.
- (d) A director must not take personal advantage of an opportunity available to VIA Rail unless VIA Rail has clearly and irrevocably decided against pursuing the opportunity, and the opportunity is also available to directors or the public.
- (e) A director must not use his or her position with VIA Rail to solicit clients for the director's business, or a business operated by a close friend, family member, business associate, corporation, union or partnership of the director, or a person to whom the director owes an obligation.
- (f) Every director must avoid any situation in which there is, or may appear to be, potential conflict<sup>2</sup> that could appear<sup>3</sup> to interfere with the director's judgment in making decisions in VIA Rail's best interest.

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<sup>1</sup> *related person* means a spouse, child, parent or sibling of a director who resides with that director.

<sup>2</sup> *conflict* means a conflict of interest or apparent conflict of interest

<sup>3</sup> *apparent conflict of interest* means any situation where it would appear to a reasonable person that the director is in a conflict of interest situation.

- (g) There are several situations that could give rise to a conflict of interest. The most common are accepting gifts, favours or kickbacks, passing confidential information to competitors and using privileged information inappropriately. The following are examples of the types of conduct and situations that can lead to a conflict of interest:

*Samples of Possible Examples*

- (i) Influencing VIA Rail to direct business to an institution where the director works or is involved with.
  - (ii) Participating in a decision by VIA Rail to hire or promote a relative of the director.
  - (iii) Influencing or participating in a decision of VIA Rail that will directly result in the director's own financial gain.
- (h) VIA Rail requires full disclosure of all circumstances that could conceivably be construed as conflict of interest.

#### 4. DISCLOSURE

- (a) Full disclosure enables directors to resolve unclear situations and gives an opportunity to dispose of conflicting interests before any difficulty can arise.
- (b) A director must, immediately upon becoming aware of a potential conflict of interest situation, disclose the conflict in writing to the Corporate Secretary, the Board Chair, or in the case of the Board Chair to the Communications & Stakeholders' Relations Committee Chair. This requirement exists even if the director does not become aware of the conflict until after a transaction is complete.
- (c) If a director is in doubt whether a situation involves a conflict, the director must immediately seek the advice of the Board Chair or the Corporate Secretary. It may also be appropriate to seek legal advice.
- (d) Unless a director is otherwise directed, a director must immediately take steps to resolve the conflict or remove the suspicion that it exists.
- (e) If a director is concerned that another director is in a conflict of interest situation, the director must immediately bring his or her concern to the other director's attention and request that the conflict be declared. If the other

director refuses to declare the conflict, the director must immediately bring his or her concern to the attention of the Board Chair. If there is a concern with the Board Chair, the issue should be referred to the Communications & Stakeholders' Relations Committee Chair.

- (f) A director is required to disclose the nature and extent of any conflict at the first meeting of the Board after which the facts leading to the conflict have come to that director's attention. After disclosing the conflict, the director:
  - (i) must not take part in the discussion of the matter or vote on any questions in respect of the matter.
  - (ii) must immediately leave the meeting and not return until all discussion and voting with respect to the matter giving rise to the conflict is completed.
  - (iii) must not attempt, in any way or at any time, to influence the discussion or the voting of the Board on any question relating to the matter giving rise to the conflict.

## 5. OUTSIDE BUSINESS INTERESTS

- (a) Directors must declare possible conflicting outside business activities at the time of appointment. Notwithstanding any outside activities, directors are required to act in the best interest of VIA Rail.
- (b) No director may hold a significant financial interest, either directly or through a relative or associate, or hold or accept a position as an officer or director in an organization that has a relationship with VIA Rail, where by virtue of his or her position in VIA Rail, the director could in any way benefit the other organization by influencing the purchasing, selling or other decisions of VIA Rail, unless that interest has been fully disclosed in writing to VIA Rail.
- (c) A "significant financial interest" in this context is any interest substantial enough that decisions of VIA Rail could result in a personal gain for the director.
- (d) These restrictions apply equally to interests in companies that may compete with VIA Rail in all of its areas of activity.

## 6. CONFIDENTIAL INFORMATION

- (a) Directors undertake and accept the obligation to take and implement all appropriate actions to preserve the secrecy of the confidential information in the same way and with the same degree of care as if this confidential information belonged to them or at least in the same manner as a reasonable person would act in its regards.
- (b) Confidential information includes proprietary technical, business, financial, legal, or director information that VIA Rail treats as confidential.
- (c) Directors may not disclose such information to any outside person unless authorized.
- (d) Similarly, directors may never disclose or use confidential information gained by virtue of their association with VIA Rail for personal gain, or to benefit friends, relatives or associates.
- (e) Directors may disclose confidential information when required by law, in such cases a director should provide advance notice of the upcoming disclosure to the Board Chair and the CEO.
- (f) Directors are advised to seek guidance from the Board Chair or the CEO with respect to what is considered confidential.
- (g) Directors are bound by their confidentiality obligations even after their tenure on the Board concludes.

## 7. INVESTMENT ACTIVITY

Directors may not, either directly or through relatives or associates, acquire or dispose of any interest, including publicly traded shares, in any company while having undisclosed confidential information obtained in the course of work at VIA Rail which could reasonably affect the value of such securities.

## 8. OUTSIDE EMPLOYMENT OR ASSOCIATION

A director who accepts a position with any organization that could lead to a conflict of interest or situation prejudicial to VIA Rail interests, shall discuss the implications of accepting such a position with the Board Chair recognizing that acceptance of such a position may require the director's resignation from the VIA Rail Board.

## 9. FAIR DEALING

Each director will deal fairly with VIA Rail's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair dealing practice.

## 10. CORPORATE OPPORTUNITIES

The best interests of VIA Rail must be uppermost in the minds of the directors whenever corporate opportunities arise and directors must avoid any action which would involve or appear to involve taking personal advantage of opportunities, direct or indirect, discovered through the use of assets, property or information of VIA Rail, to further their position for personal gain.

## 11. ENTERTAINMENT, GIFTS AND FAVOURS

- (a) It is essential to efficient business practices that all those who associate with VIA Rail as suppliers, contractors or directors have access to VIA Rail on equal terms.
- (b) Directors and members of their immediate families should not accept entertainment, gifts or favours that create or appear to create a favoured position for doing business with VIA Rail. Any firm offering such inducement shall be asked to cease; a sustained business relationship will be conditional on compliance with this Code.
- (c) Similarly, directors may not offer or solicit gifts or favours in order to secure preferential treatment for themselves or VIA Rail.
- (d) A director may accept modest discounts on a personal purchase of a supplier's or customer's products only if such discounts do not affect VIA Rail's purchase or selling price and are generally offered to others having a similar business relationship with the supplier or customer.
- (e) Under no circumstances may directors offer or receive cash, preferred loans, securities, or secret commissions in exchange for preferential treatment. Any director experiencing or witnessing such an offer must report the incident to the Board Chair or the Communications & Stakeholders' Relations Committee Chair immediately.

- (f) Gifts and entertainment may only be accepted or offered by a director in the normal exchanges common to established business relationships. An exchange of such gifts shall create no sense of obligation.
- (g) Inappropriate gifts received by a director should be returned to the donor and may be accompanied by a copy of this Code.
- (h) Full and immediate disclosure to the Board Chair of borderline cases will always be taken as good-faith compliance with this Code.

## 12. USE OF VIA RAIL'S PROPERTY

- (a) A director requires VIA Rail's approval to use property owned by VIA Rail for personal purposes, or to purchase property from VIA Rail unless the purchase is made through the usual channels also available to the public.
- (b) Even then, a director must not purchase property owned by VIA Rail if that director is involved in an official capacity in some aspect of the sale or purchase.
- (c) Directors may be entrusted with the care, management and cost-effective use of VIA Rail property and should not make significant use of these resources for their own personal benefit or purposes. Clarification on this issue should be sought from the Board Chair.
- (d) Directors should ensure all Corporation property that may be assigned to them is maintained in good condition and should be able to account for such property.
- (e) Directors may not dispose of VIA Rail property except in accordance with the guidelines established by VIA Rail.

## 13. RESPONSIBILITY

- (a) VIA Rail is determined to behave, and to be perceived, as an ethical organization.
- (b) Each director must adhere to the standards described in this Code of Conduct, and to the standards set out in applicable policies, guidelines or legislation.
- (c) Integrity, honesty, and trust are essential elements of VIA Rail's success. Any director who knows or suspects a breach of this Code of Conduct and Conflict

of Interest Guidelines has a responsibility to report it to the Board Chair or the Communications & Stakeholders' Relations Committee Chair.

- (d) To demonstrate determination and commitment, VIA Rail requires each director to review and sign the Code annually. The willingness and ability to sign the Code is a requirement of all directors.

#### 14. BREACH OF CODE

A director found to have breached his/her duty by violating the Code of Conduct will be liable to censure or a recommendation for dismissal to the Government.

#### 15. WHERE TO SEEK CLARIFICATION

The Board Chair and/or the Corporate Secretary will provide guidance on any item in this Code of Conduct and Ethics. The Board Chair and or the Chair of the Communications & Stakeholders' Relations Committee may at his/her discretion or at the request of a director, seek the advice of outside Counsel.

I ACKNOWLEDGE that I have read and considered the Code of Conduct and Ethics for Directors of VIA Rail Canada and agree to conduct myself in accordance with the Code of Conduct and Ethics for Directors.

Signature: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

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

# Appendix A

## Terms of Reference for a Director

### I. INTRODUCTION

The Board of Directors acts collectively and exercises its powers and responsibilities as a group. Individual directors have no power to act on their own.

### II. FIDUCIARY RESPONSIBILITIES

Broadly speaking, a director of VIA Rail Canada Inc. (“VIA Rail”) has several fundamental obligations to perform.

#### A. Honesty and Good Faith

Common law requires a director to act honestly and in good faith with a view towards the best interests of VIA Rail. The key elements of this standard of behaviour are:

- i) A director must act with a view to the best interests of VIA Rail and not in his or her self-interest.
- ii) A director cannot take personal advantage of opportunities that come before him/her in the course of performing his/her director duties.
- iii) A director must disclose to the Board any personal interests that he/she holds that may conflict with the interests of VIA Rail.
- iv) A director must adhere to the requirements of the VIA Rail Director's Code of Conduct and Ethics.

#### B. Skillful Management

A director shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in similar circumstances. This means:

- i) The standard of behavior expected of a director will depend upon the particular qualities or characteristics that the director brings to VIA Rail relative to the particular matters under consideration.

- ii) The director must be proactive in the performance of his or her duties by:
  - a) attending Board and committee meetings; a director who has not attended meetings, must show diligence by examination of reports, discussion with other directors, and otherwise being sufficiently familiar with the organization's activities so that he/she does not suffer as a result of non-attendance;
  - b) participating in a meaningful way; and
  - c) being vigilant to ensure that VIA Rail is being properly managed.

### III. STANDARDS OF BEHAVIOUR ESTABLISHED BY THE BOARD

The Board has established the following standards of behaviour for directors.

#### A. General

As a member of the Board, each director shall:

- i) demonstrate an understanding of the difference between governing and managing, and not encroach on management's area of responsibility;
- ii) respect confidentiality recognizing that all Board activities, debates, conversations and positions and all VIA Rail information received by a director are confidential and that the only report of a meeting of the Board is contained in the official minutes after they have been approved by the Board; and
- iii) understand conflict of interest issues and declare real or perceived conflicts.

#### B. Skills and Experience

As a member of the Board, each director shall:

- i) demonstrate skills and experience that are complementary to the current directors and helpful with VIA Rail's current activities and strategic direction;
- ii) utilize external relationships and resources in making a contribution and adding value to VIA Rail;
- iii) effectively apply knowledge, experience and expertise to issues confronting VIA Rail; and

- iv) serve as a helpful resource to the Board and to management, where necessary and appropriate.

#### C. Preparation, Attendance and Availability

As a member of the Board, each director shall:

- i) attend meetings well prepared, having completed and understood the necessary background reading and having consulted other directors and/or management, if required, for clarification;
- ii) demonstrate broader preparation than just the distributed material;
- iii) be available when needed; and be accessible and approachable;
- iv) have the necessary time and commitment to fulfill responsibilities as a director of VIA Rail and as a member of committees;
- v) organize him/herself so as to be able to attend the entire Board or committee meeting, not just parts of meetings; and
- vi) maintain an excellent Board and committee meeting attendance record<sup>4</sup>.

#### D. Communication and Interaction

As a member of the Board, each director shall:

- i) participate fully and frankly in Board deliberations and discussions;
- ii) contribute meaningfully and knowledgeably to Board discussions;
- iii) be a team player – work effectively with fellow directors and be a positive and constructive force within the Board;
- iv) communicate persuasively and logically; voice concerns; listen; raise tough questions in a manner that encourages open discussion;
- v) be willing to take a stand or express a view, even if it runs contrary to prevailing wisdom or the direction of conversation; and exercise independent judgment;

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<sup>4</sup> The target is 100% attendance. Anything less than 80%, without extenuating circumstances, would create difficulty for the Board.

- vi) advise the CEO and the Board Chair in advance when introducing significant and/or previously unknown information or material at a Board meeting;
- vii) respect that contact with Federal Ministers or the Prime Minister about VIA Rail business are normally only to be made through or by the Board Chair; and
- viii) ensure that any casual contact or information conveyed to a Minister of the Crown or a federal civil servant, is conveyed to the Board Chair as soon as possible.

E. Business, VIA Rail and Industry Knowledge

As a member of the Board, each director shall:

- i) demonstrate strong understanding of VIA Rail's business, markets, operations and technology;
- ii) where appropriate, use outside contacts to increase understanding of the various issues with which the Board is concerned;
- iii) participate in director orientation and other development programs developed by VIA Rail from time to time; and
- iv) be an effective ambassador and representative of VIA Rail.