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Explanatory Memorandum GD-02 – Conflicts of interest

This explanatory memorandum forms part of the Standards Applicable under the Recognition Scheme for Charitable Organisations and enters into force on 1 January 2026. Specific terms in this explanatory memorandum have the same meaning as those used in the standards.

1. INTRODUCTION

This explanatory memorandum concerns the careful handling of conflicting interests within Charitable Organisations of all categories.

The standards

The following standards address (among other things) conflicting interests and are discussed in the sections below: Standard 5.3.1 (Measures against conflicting interests), 5.3.2 (Accountability conflicting interests), 6.1.1 (Integrity policy). Also relevant is the text on conflicting interests in the preamble to the standards.

2. THE TERM ‘CONFLICTING INTERESTS’

In the standards (under the heading ‘terms used’), the term ‘conflicting interests’ is defined as:

Any direct or indirect personal interests of persons who are required to act in the interest of the Charitable Organisation, which are incompatible with the interests of the Charitable Organisation. This is explained in greater detail in the preamble.

As appears from the preamble, a conflict of interest arises when a person who is required to act in the interest of the Charitable Organisation cannot be deemed to be capable of serving that interest with integrity and without bias. The reason for this may be the presence of a personal interest or a position or involvement in another interest that does not run parallel to the interests of the Charitable Organisation. Any conflict of interests, whether real or apparent, must be treated with the greatest care.

The persons who are required to act in the interest of the Charitable Organisation are not just those (individuals and legal entities) who are on the board of the Charitable Organisation. They also include members of the Supervisory Board, directors who may or may not be board members, as well as other persons working within the Charitable Organisation's organisation.

3. THE APPLICABLE STANDARDS

A B C D E Standard 5.3.1 – Measures against conflicting interests

S S S S S The Charitable Organisation shall provide adequate rules in its articles of association and/or regulations aimed at preventing any improper handling, or

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the appearance thereof, of any conflicting interests among board members and (where applicable) Supervisory Board members, and shall implement these rules.

This is a strict requirement in all categories. It must therefore always be complied with. This standard applies to board members and Supervisory Board members. When applying the board model/management model as an equivalent alternative to the Supervisory Board model, this standard applies by analogy to the directors. See Explanatory Memorandum GD-01 on the Supervisory Board model and equivalent alternatives.

A B C D E Standard 5.3.2 – Accountability for conflicts of interests

S S S S S	If a conflict of interests has occurred with regard to a director or (where applicable) a Supervisory Board member, the Charitable Organisation shall be transparent about this and shall mention what measures have been taken in its annual report.
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Again, this is a strict requirement in all categories. This transparency requirement too applies to board members and Supervisory Board members. When applying the board model/management model as an equivalent alternative to the Supervisory Board model, this standard applies by analogy to the directors. See Explanatory Memorandum GD-01 on the Supervisory Board model and equivalent alternatives.

A B C D E Standard 6.1.1 – Integrity policy

D S S	The Charitable Organisation shall aim to prevent any unethical conduct and shall provide an insight into how it does so.
S S	The Charitable Organisation shall adopt an integrity policy in order to further the ethical conduct among employees and others involved with the Charitable Organisation and to as much as possible minimise any risks of unethical conduct. The Charitable Organisation shall ensure that responsibility for the integrity policy is assigned.
D S S S S	Unethical conduct shall in any case be taken to mean: A. Abuse of power (corruption, improper handling of conflicting interests, nepotism, manipulation, misuse/leaking of information). B. Financial abuses [...]. C. Interpersonal violations [...].

Although this standard varies according to category, it applies to the entire organisation of the Charitable Organisation. This means that it applies to all employees and others involved

in the Charitable Organisation. Under this standard, unethical conduct among other things includes the improper handling of conflicting interests.

Insofar as standard 6.1.1 concerns board members, Supervisory Board members and directors under the board model/management model, it coincides with the aforementioned standards 5.3.1 and 5.3.2. In addition, standard 6.1.1 applies to all directors who are not board members, as well as to any further employees and persons working as contractors within the Charitable Organisation's organisation.

These standards do not, of course, in any way affect the general legal obligations of board members, directors and others who hold any positions or are employed with the Charitable Organisation to perform their duties with diligence and integrity, including the diligent handling of any actual or potential conflicts of interests.

4. IMPROPER HANDLING OF CONFLICTING INTERESTS

When establishing rules and policies to prevent the improper handling of conflicting interests, or the appearance thereof, the following should, among other things, be considered:

- (a) Anyone with a conflicting interest must refrain from the deliberations and decision-making on the subject in question, or from taking part in these. The fact that the Dutch Civil Code only stipulates this with respect to board members and Supervisory Board members,¹ does not alter all this.
- (b) The notion of due care may require that certain restrictions are imposed on the person having conflicting interests, such as: not conducting any negotiations on behalf of the Charitable Organisation, not having access to certain information and a prohibition on representing the Charitable Organisation when entering into transactions, performing other legal acts and making payments.
- (c) The notion of due care may also require that additional measures are taken to eliminate any conflicting interests, or the appearance thereof, such as: requesting different quotations (including from independent parties) or an independent valuation report. In case of doubt as to whether someone has conflicting interests in a particular situation, it may also be appropriate to refrain from acting. If it is nevertheless decided to proceed, due care will generally require that the reasons for doing so are recorded in writing.
- (d) In case of possible doubt as to whether someone has conflicting interests in a particular situation, one or more persons other than the person concerned should

¹ For associations, see article 44 (6) and article 47 (7) of Book 2 DCC; for foundations, see article 291 (6) and article 292a (7) of Book 2 DCC.

determine whether the case should be treated as a situation involving conflicting interests.

- (e) Anyone who has to act in the interest of the Charitable Organisation must not, as a result of any conflicting interests, contribute to the Charitable Organisation being deprived of opportunities to which it is entitled.
- (f) The prospect of structural conflicting interests must be prevented. This concerns cases in which it is foreseeable that conflicting interests, or the appearance thereof, will arise in respect of a person on a regular basis. If there are concerns about this, it may be appropriate, for example, not to appoint the person concerned to the position of board member or Supervisory Board member (or to any other position within the Charitable Organisation).

The fact that someone has interests (or is involved in interests) that affect the interests of the Charitable Organisation, may give rise to structurally conflicting interests, but this does not necessarily have to be the case. Where someone's different roles overlap, this may sometimes rather further the interests of the Charitable Organisation, without the interests being 'conflicting', i.e. without there being any doubt that the person concerned will serve the interests of the Charitable Organisation with integrity and without bias. This will on each occasion require careful consideration, which should be left to others than the person concerned.

5. BELANGENVERSTRENGELING'

The preamble to the standards states that 'Conflict of Interest' is frequently translated into Dutch as 'belangenverstrengeling'. These standards, however, do not employ that terminology and instead adopt the term 'Tegenstrijdig Belang'. This is done in order to avoid confusion, as the Dutch term 'belangenverstrengeling' is given different meanings in practice. According to some, persons who are required to serve the interests of the Charitable Organisation have a duty to avoid 'belangenverstrengeling' (and the appearance thereof) at all times. They therefore by definition interpret the term as something negative. According to others, however, there can also be positive forms of 'belangenverstrengeling' apart from negative ones. To avoid this confusion, in Dutch the term 'Tegenstrijdig belang' is used in the standards and, in terms of substance, the above statements apply. In English, this concept is referred to as a 'conflict of interest', which clarifies the emphasis on its undesirable outcomes that is intended to be addressed by the standards.

Nevertheless, the Dutch term 'belangenverstrengeling' is regularly used in practice, for example in the articles of association and regulations of Charitable Organisations. The standards do not oppose the continuation of this practice. Whenever the Dutch term 'belangenverstrengeling' is used, it will on each occasion have to be explained and

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determined what meaning has to be attached to the term in that context. However, given the potential for confusion, the use of the term in practice requires attention. Charitable Organisations using the term are advised to check whether the meaning they attach to it is sufficiently clear from the context.