

RENAISSANCE SOUTHEND LIMITED

CODE OF CONDUCT & GUIDANCE

FOR BOARD DIRECTORS

September 2009

Building A Better Future

CODE OF CONDUCT & GUIDANCE FOR DIRECTORS OF RENAISSANCE SOUTHEND LIMITED (“the Company”)

Background

Renaissance Southend Ltd, is an Urban Regeneration Company (“**URC**”), and is incorporated as a not for profit private company limited by guarantee. As such it does not have shareholders, but “**the Founder Members**”, namely the East of England Development Agency (“**the Agency**”), English Partnerships (“**EP**”), South East Essex College “**the College**”, Southend-on-Sea Borough Council (“**the Council**”) and University of Essex (“**the University**”), have agreed to participate in the Company for the purpose of the promotion of, and assisting, the regeneration of Southend.

The Founder Members have entered into a members’ agreement (“**the Members’ Agreement**”) governing their involvement in the Company, the Company’s activities and its responsibilities to the Members. Each Founder Member is entitled to appoint a Director and approve the appointment of other Directors.

All Directors of the Company are obliged to enter into an undertaking to comply with the terms of that Agreement in addition to the Company’s Memorandum and Articles of Association.

Purpose of this Code of Conduct

The Company operates using public funds and carries out activities that have a high public profile; inevitably the Company and its Directors will be subject to greater public scrutiny and responsibility than would perhaps be the case with a wholly private company.

This purpose of this Code of Conduct is to provide Directors with a general overview of the general duties and responsibilities owed by Directors of the Company and the other principles that the Company and its Directors have agreed to adopt.

Therefore:

- the Company and its Directors have adopted and will seek to abide by the seven Principles of Public Life (“**the Nolan Principles**”), set out in Appendix 2 to this Code.
- In addition, and in pursuit of the aims and objectives set out within its Memorandum and Articles of Association, the Company and its Members and Directors must at all times maintain high standards of conduct and probity.
- Statutory duties apply to all Directors and officers, which will ensure the probity of the Company in terms of corporate governance, and ensure that these standards are recognised by, and are demonstrable to, the general public, local, regional and central government, and the Company’s Members and partners.

Due to the Company’s aims and purpose, it selects its Directors from particular industries and public bodies, which means that from time to time other business commitments undertaken by the Directors and the officers will impact directly or indirectly on the work of the Company. Directors must therefore be very aware of the need to consider and comply with their statutory and other duties.

1. Conflict of Interests: Companies Act 2006

There are four statutory duties under the Companies Act 2006 now in force, which are covered below, dealing with conflicts of interest.

Transactional conflicts are not the same as situational conflicts and different rules apply to each (see below for more information). Situational conflicts require prior authorisation to avoid a breach of duty. Transactional conflicts require directors to declare their interest and under the Company's Articles of Association (see the extract at Appendix 1) they must withdraw from the meeting; cannot be counted in the quorum for that part of the meeting; and cannot vote on the Board resolution relating to the relevant transaction. Failure to declare an interest in an existing transaction or arrangement with the Company (section 182) is a criminal offence whereas a breach of the other duties could only give rise to civil claims against a director.

1.1 Duty to avoid conflicts of interest (section 175) (situational conflicts)

Directors have a duty to avoid a "situation" in which there is, or may be, a conflict between the interests of the Company and the direct or indirect interests of the director or between the director's duties to the Company and to another person. The 2006 Act has introduced a new statutory power for a board to authorise such situational conflicts, provided this is done in advance. The Board has been authorised to deal with conflicts to enable the directors to approve these if appropriate.

This 2006 Act requirement will mean that the Company has to operate more formal procedures regarding conflicts of interest but provided a potential situational conflict has been authorised, the change should not result in directors having to behave in a different way than they would at present.

Exemption

There is no breach of duty when a situation cannot reasonably be regarded as likely to give rise to a conflict of interest. To identify situational conflicts, you may find it helpful to ask yourself the following questions:

- (a) Is your role/connection with ABC likely to prevent you, when acting as a director of the Company, from giving sole consideration to the interests of the Company?
- (b) Is your role/connection with the other party likely to involve consideration of actions that could be adverse to the Company's interests or to put you in a position where information that you know as a result of being a Company director would be relevant to the decision to be taken?
- (c) Are you part of the decision making process of the other party?
- (d) Particularly in relation to any perceived conflict, what is the justification for the Company to authorise it?
- (e) Do the interests of the two companies compete, either in their industry markets or in relation to strategic opportunities?

- (f) Would the activities undertaken in one role be likely to have a material impact on the other?

Below are some examples of situations which could fall within section 175(1) (situational conflicts) (NB: this list is not exhaustive):

- (a) if a Director of the Company works for a competitor or has an interest in another company which could be a competitor in some respects of the Company;
- (b) if a Director of the Company is a senior officer or manager in a stakeholder organisation of the Company – where decision making could give rise to a conflict between the stakeholder organisation and the Company;
- (c) if a Director of the Company is a supplier or potential supplier to the Company, e.g. under a proposed contract for goods or services;
- (d) if a Director of the Company, or any company or organisation for which he is a senior officer or manager, owns land or property adjacent to Company land or property, the value of which could be affected by the activities of the Company; or
- (e) if a Director of the Company has an advisory relationship (for example, financial or legal) with either the Company or an adjacent landowner or local developer.

The duty to avoid conflicts of interest will continue to apply after a person ceases to be a Director as regards the exploitation of any property, information or opportunity of which he/she became aware when he/she was a Director.

1.2 **Duty not to accept benefits from third parties (section 176)**

You must not accept any benefit (including a bribe) from a third party which is conferred because you are a Director, or because you do (or do not do) something as a Director. This duty does not apply if the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. If you are in doubt whether any benefit is permitted, you should seek clarification from the Company Secretary before acceptance.

1.3 **Duty to declare interest in proposed transaction or arrangement with the Company (section 177)**

As a Director, you must declare to the other Directors the nature and extent of any direct or indirect interest in a proposed transaction or arrangement with the Company.

It should be noted that:

- transactional conflicts include auctions and tender processes; and
- a transactional conflict where the transaction results in an ongoing relationship with the Company may become a situational conflict.

1.4 **Duty to declare interest in existing transaction or arrangement entered into by the Company (section 182)**

As a Director, you must declare to the other Directors the nature and extent of any direct or indirect interest in an existing transaction or arrangement entered into by the Company - such as:

- an interest in a transaction entered into by the Company before you became a director; or
- where you have failed to comply with section 177 before the Company entered into a transaction; or
- where you have acquired an interest after the Company has entered into the transaction.

If you become aware that you have a direct or indirect interest in an existing or proposed transaction with the Company, you should notify the Board at the next Board meeting or by a written declaration (see Appendix 3). Interests in proposed transactions should be notified before the transaction is entered into and directors have an ongoing duty to update any changes in these interests by making a further declaration if an earlier declaration proves to be, or becomes inaccurate or incomplete.

Exemptions to sections 177 and 182

No declaration is required under these sections where:

- the director is not aware of his interest or where the director is not aware of the transaction or arrangement in question – for these purposes directors are treated as being aware of matters of which they ought reasonably to be aware;
- if the interest cannot reasonably be regarded as likely to give rise to a conflict of interest;
- the other directors are already aware of the interest; or
- the interest concerns the terms of the director's service contract which have been (or are to be) considered at a board meeting,

2. **General duties under the Companies Act 2006 and fiduciary duties**

2.1 **Duty to promote the success of the Company (section 172)**

As a Director, you must act in the way you consider, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole. In fulfilling this duty, you must have regard to (among other matters) the following factors:

- (a) the likely consequences of any decision in the long term;
- (b) the interests of the Company's employees;
- (c) the need to foster the Company's business relationships with suppliers, customers and others;

- (d) the impact of the Company's operations on the community and the environment;
- (e) the desirability of the Company maintaining a reputation for high standards of business conduct; and
- (f) the need to act fairly between members of the Company.

If the Company is insolvent (or in danger of becoming so), your primary responsibility will be to consider the interests of Company's creditors.

2.2 **Duty to act within powers (section 171)**

As a Director, you must act in accordance with your Company's constitution and you must only exercise your powers for their proper purpose (that is, the power for which they were conferred, and not, for example, to protect your own position as a Director or to make matters difficult for a particular Member). You should be aware that this prohibition applies even if you believe, in good faith, that your conduct will promote the success of the Company for the benefit of the members as a whole.

A Company's constitution is widely defined to include:

- The Company's articles (and memorandum).
- Decisions taken in accordance with the articles and other decisions taken by the members if they can be regarded as decisions of the Company.
- Any resolutions and agreements affecting a Company's constitution, for example the Members' Agreement.

You should familiarise yourself with the constitution of the Company, particularly with any limitations on the powers of the Company or the Directors.

2.3 **Duty to exercise independent judgment (section 173)**

As a Director, you must not restrict yourself from exercising independent judgment on the Company's behalf. You cannot agree with any shareholder that appoints you to vote at board meetings in any particular way (even if voting in that way would not otherwise be a breach of your duties as a Director to the Company). An exception to this rule is where you and your co-Directors decide that entering into an agreement on behalf of the Company, under which you will be bound to vote in such a way as to ensure that the Company performs its obligations under that agreement, would be most likely to promote the success of the Company for the benefit of its members as a whole.

For example, the Directors are required to undertake to uphold the provisions of the Members' Agreement and therefore to exercise their votes as Directors to procure that the Company observes the matters set out in that agreement.

This duty will not prevent you from relying on advice, as long as you exercise your own judgment in deciding whether or not to follow the advice.

2.4 **Duty to exercise reasonable care, skill and diligence (section 174)**

As a Director, you must exercise due skill and care in fulfilling your functions. Under section 174, a Director must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both:

- (a) The general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the Director in relation to the Company (the "**objective**" test).
- (b) The general knowledge, skill and experience that the Director actually has (the "**subjective**" test).

Therefore, a person must be sufficiently qualified or experienced to be able to fulfil the functions that might reasonably be expected to be carried out by him as a Director, and if the person is particularly highly qualified or experienced then he would be expected to exercise a high level of skill and expertise.

You are also required to exercise your Directors' duties diligently, keep yourself informed about the Company's affairs and, with your co-Directors, to supervise and control them. Overall, this responsibility cannot be delegated to any party. However, this does not prevent you from relying on the experience and expertise of your colleagues or, generally, from sensibly delegating or allocating tasks to others, provided that you do not attempt to absolve yourself entirely of responsibility.

2.5 **Duty not to make unauthorised profits (fiduciary duty)**

As a Director, you must account for any personal profit that you make by virtue of your Directorship, unless that profit was authorised by a shareholder resolution or was in accordance with the Company's articles (see articles 13.8 and 13.9 attached at Appendix 1). The duty to account is strict and does not depend on fraud or lack of good faith, or on the Company suffering any loss. This duty also extends to an obligation not to misapply the Company's property, even if you do not obtain any personal benefit from that misapplication.

3 **Duty of Confidentiality**

As a Director of the Company, you owe a duty of confidentiality to it. The duty of confidentiality is such that, even where you are appointed by a member, you must not, without the authority of the Company, disclose any confidential information relating to the Company, which has been gained by you in your position as a Director of the Company to the member.

Under the Companies Act 2006, compliance with the general duties does not remove the need for approval under applicable provisions of chapter 4 of the 2006 Act in the case of certain transactions with a director (or in some cases, with a connected person), such as long service contracts, substantial property transactions, loans and payments for loss of office.

Only directors can ultimately be aware of any actual or potential conflict arising from their other business interests (or personal connections). A director must keep these duties and his interests under review and inform the Board Chairman or the Company Secretary of any changes (e.g. new directorships).

4. Interpreting and applying these requirements:

In order to fulfil these requirements:

- Directors must ensure that their professional, private or personal interests, and those of their family or household, do not influence their decisions that directly involve the Company and that they do not use their position to obtain any form of personal gain of any sort to themselves,
- Directors must be meticulous about declaring conflicts of interest, whether actual, potential, or likely to be perceived as such.
- The Articles of Association of the Company sets out the procedure for dealing with Directors interests in articles 13.8, 13.9 and 13.10 (set out in Appendix 1) and will be covered within the Directors Induction Programme and highlighted at the beginning of each Board meeting, Further Directors will be asked to check and update their Declarations of Interest register entry at least once a year.

The Board has resolved the following in order to assist Directors to comply with the requirements set out above:

- (a) All Directors shall adhere to the Nolan Principles set out in Appendix 2 in matters relating to the business and operation of the Company.
- (b) All nominated and co-opted Directors, other than salaried Directors and the Chairman, shall perform their role as volunteers and receive no remuneration from the Company (other than expenses actually incurred in attending meetings, functions, or related training courses or conferences).
- (c) A prior resolution of the Board will be required before the Company enters into any business arrangement or contract with any contractor, supplier, professional firm, company, or business associate in which any Director has any interest. (This will not normally apply to major utility providers such as Gas, Electricity, or Water Companies).

- (d) The Company will maintain a Register of Directors' Interests, which will be available for public inspection. It is the responsibility of every Director to ensure that their entry in this Register is complete and up to date, and the Register as a whole will be reviewed on an annual basis by the Chairman and Company Secretary or designate. The Register will contain the name of any company, organisation, or other relevant outside interest with which the Director is associated, along with a brief description of its principal activities.
- (e) Upon circulation of an agenda for a meeting of the Company's Board, each director shall consider whether any agenda item relating to any proposed transaction or arrangement involving land or property gives rise, or potentially gives rise, to a conflict of interest due to it involving land or property in which the Director (or any company with which he/she (or connected persons) has an interest or association) has an existing legal interest, the Director shall, in addition to declaring an interest at the meeting, wherever possible advise the Company Secretary and Chairman in advance of the meeting of the interest for inclusion on the Register by completing the "Notification of Perceived Potential Conflict" form attached as Appendix 3.
- (f) The agenda for all meetings of the Company's Board and all Board Committees shall, before the consideration of any business, include an item requiring Directors to declare:
- Any interest in an agenda item even if already listed in the Register, including shares held in any company relevant to an item.
 - Any interest in an organisation which is listed in the Register but where the subject of the agenda item lies outside of the description of the nature of interest specified in the Register
 - Irrespective of the Register, any actual or potential ownership of land or property or other interest of relevance to an agenda item under discussion.
- (g) If a conflict or potential conflict is not identified until after a discussion has commenced, as soon as it becomes apparent to a Director, he/she shall declare it at that time.
- (h) For all declarations under f) and g) above, the Board shall act in accordance with article 13.10 of the Articles of Association.
- (i) Any Director who has reason to believe that he/she is or has been engaged upon any business enterprises that could give rise to questions or duality of interest should advise the Company Secretary, Chairman or Chief Executive of the circumstances immediately.

5. Materials and Services

Any Director or a member of his/her household wishing to engage a company utilised by the Company to carry out work or private services on behalf of him/her or a member of his/her household or immediate family to a value greater than £120 (inclusive of VAT) shall register the fact with the Company Secretary in the Register set up for that purpose. No work should be so contracted without the prior approval of the Chairman of the Company.

Whilst not preventing Directors from using such firms, this ensures that all such transactions can be demonstrated to be proper and legitimate.

6. Gifts and Hospitality

Gifts, other than of nominal value (less than £25), shall not in any circumstances be accepted from any company or organisation which has a past, current or potential commercial relationship with the Company and/or past, current or potential involvement in projects in its area.

A Register will be kept by the Company Secretary of all hospitality offered and received by Directors from any company or organisation, in connection with their role as a Director of the Company and any hospitality involving an overnight stay will not normally be accepted.

If in Doubt – Ask!

Where there is doubt as to whether or not a conflict arises or if you require any assistance, Directors have an obligation to seek the advice of the Chairman or Company Secretary.

Breach of the Code of Conduct

Any complaint by a Director, employee or member of the public alleging a breach of this Code shall be reported to the Chairman, Vice Chairman, Chief Executive or Company Secretary, as appropriate, who will investigate and provide a written report to the Founder Members, who will consider the facts and make recommendations to the Board, as appropriate, at the earliest opportunity.

Employees

A separate Code of Conduct exists for all employees of the Company but covers the Nolan Principles and is available on request.

Approved by Finance & Audit Committee – 11th August 2009

Approved by Board – 8th September 2009

Extract from the

ARTICLES OF ASSOCIATION

RENAISSANCE SOUTHEND LIMITED

APPENDIX 1

13.8 Subject to the provisions of the Act, and provided that he has disclosed to the directors the nature and extent of any interest of his, a director notwithstanding his office:

13.8.1 may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested;

13.8.2 may be a director or other officer of or employed by or be a party to any transaction or arrangement with or otherwise interested in any body corporate promoted by the Company or in which the Company is in any way interested;

13.8.3 may or any firm or company of which he is a member or director may act in a professional capacity for the Company or any body corporate in which the Company is in any way interested; and

13.8.4 shall not by reason of his office be accountable to the Company for any benefit which he derives from such office, service or employment or from

any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

13.9 For the purposes of Article 13.8:

13.9.1 a general notice to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified;

13.9.2 an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and

13.9.3 an interest of a person who is for any purpose of the Act (excluding any statutory modification not in force when the Company was incorporated) connected with a director shall be treated as an interest of the director and in relation to an alternate director an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise.

Appendix 2

The Seven Principles of Public Life

The '**Seven Principles of Public Life**' should apply to all in the public service and are adopted by Renaissance Southend Limited's Board of Directors and employees. These are:

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Appendix 3

NOTIFICATION OF PERCEIVED POTENTIAL CONFLICT

NAME OF DIRECTOR

DETAILS OF PROPOSED TRANSACTION

(Please refer to the specific agenda item or board minutes and attach a copy)

DETAILS OF POTENTIAL CONFLICT

A. Does the proposed transaction involve a connected person or company under one of the following categories defined in the Companies Act 2006;

- (i) Member of a Director's family (i.e. spouse, civil partner, any person with whom the Director lives as a partner in an enduring family relationship, a child or stepchild of a Director's partner living with the Director and under the age of 18, or the Directors parents)
- (ii) A company connected with the Director (i.e. The Director or persons connected with the Director, are interested in 20% of more the equity share capital of the company or can exercise more than 20% of the voting power at a general meeting of the company, or the Director holds the relevant percentage of shares of votes in relation to trusts set up for the benefit of that Director or his family or in relation to partners of a Director).

YES/NO (please specify whether subsection ('i') or ('ii') applies)

If so, please specify details of connected person or company and nature of the connected persons or connected company's involvement in a proposed transaction.

B. Does the conflict relate to your interest in a third party company?

YES/NO

If so, please supply details of Director's interest in third party (e.g. Director/ Partner/Member/Employee). Provide full details of the level of interest in the third party (e.g. number of shares held and issued share capital, are you an equity or a salaried partner, if an employee length of service).

C. Do you consider yourself to hold confidential information relating to the third party which may conflict with your duty to disclose information to the Company?
YES/NO

If so, please provide details.

D. Are you aware of any other Directors who may be affected by this perceived potential conflict?
YES/NO

If so, please provide details

PERCEIVED POTENTIAL CONFLICT

Please provide as much detail as possible considering the following areas;

Intended outcome of the transaction and details of the potential conflict which may arise.

Possible outcomes of the transaction which may alter the potential conflict or increase the risk of it arising.

Signed:

Date: