

**CODE OF CONDUCT:
DUTIES and RESPONSIBILITIES
of DIRECTORS of the
JUDO FEDERATION OF AUSTRALIA Inc (“JFA”)**

1. Purpose of Code of Conduct

The purpose of this Code of Conduct is to **outline the key legal duties and obligations of JFA Directors and set out clear principles and guidelines for the ethical and professional conduct of Directors in effectively carrying out their responsibilities.**

Directors of JFA owe certain duties to JFA and its members. **The duties require Directors to act competently, honestly, in good faith and in what they consider to be the best interests of JFA.** If Directors fail to satisfy any of these duties, they may be liable to compensate members of JFA or third parties who suffer loss as a result of that failure.

This Code of Conduct covers both common law duties (those duties imposed by the courts), the duties imposed on Directors under the *Corporations Act* and the moral duties of the role. It is not an exhaustive summary of a directors' legal obligations, but it does summarise some of the key obligations imposed on directors of companies from **which minimum standards of ethical conduct can be drawn.**

The Constitution of JFA is the other key document governing the appropriate legal and ethical behaviour of Director's in the performance of their duties. As such, **JFA's constitution constitutes a contract between the company and each director** and company secretary, so far as it applies to each director and company secretary (section 140(1)(b) of the *Corporations Act*).

2. The Primary Role of the Board and Directors (Committee of Management – CoM)

The primary function of the CoM (in accordance with the JFA Constitution) is to manage the business of JFA. **'The Board is ultimately accountable for the performance of the organisation'** (p8 ASC – *Governing Sport – the role of the Board, 2005*).

As such the role of a board and its directors is to give **direction to the organisation and to accept responsibility for its management. In addition the Board is responsible for the setting of the ethical framework for the organisation and defining and nurturing the organisation's fundamental values.**

In order to carry out this primary role directors are regarded as owing a **fiduciary duty** to JFA. This means that a director has special obligations to JFA because he or she occupies a position of trust. Accordingly, CoM members 'share a common duty as trustees on behalf of stakeholders for:

- the achievement of appropriate outcomes
- the financial security of the organisation
- the expression of a moral and social responsibility to the members and the community at large'.

(p13 ASC – *Governing Sport – the role of the Board, 2005*).

As a result of the fiduciary relationship between the director and JFA, the director is bound to exercise their rights and powers in good faith and for the benefit of JFA.

In exercising this fiduciary duty each CoM member is responsible for all decisions taken by the CoM. This means that **board members share a common liability and they can be sued individually or collectively (jointly or severally)** in the event of a determination that the Board

failed to properly exercise its duty of care of knowingly acted in breach of the law (*pg 8 ASC – Governing Sport – the role of the Board, 2005*).

In achieving its primary function and exercising its fiduciary duty, the CoM's responsibilities can be broken down into the following key areas:

- **Legal responsibilities**
- **Strategic responsibilities**
- **Financial responsibilities**
- **Organisational risk responsibilities**
- **Chief Executive Officer(CEO) or Senior Staff appointment and management responsibility (where no CEO)**
- **Stakeholder responsibility**
- **Moral responsibilities**

Details of appropriate CoM member conduct in carrying out their duties and responsibilities in these key areas are set out below. These have been adapted to the specific circumstances of JFA Inc from pp8 – 16 Responsibilities of the Board, ASC – Governing Sport – the role of the Board, 2005 and are in accordance with the best practice principles advocated by the ASC. Details of the Legal Responsibilities has been expanded beyond the information provided in the ASC publication in order to provide CoM members with a greater appreciation of the common law and statutory requirements.

3. Legal Responsibilities

Directors are required to understand the needs of JFA and their legal responsibilities as directors.

The principal statutory and common law duties imposed upon directors may be summarised as follows:

(a) to act honestly and in good faith in the interests of JFA as a whole

Directors are given broad discretions to manage JFA's business under the Constitution of JFA. The duty of good faith applies to all discretions and decisions of directors.

The **duty of good faith and honesty** arises at common law partly (as with most of the other common law duties of directors) because directors are regarded as being in a position of trust with respect to JFA.

This duty is also reflected in the *Corporations Act*, which requires that an officer of the company at all times act honestly in the exercise of his or her powers and the discharge of his or her duties.

In this context, the duty of honesty is equivalent to the duty to act for a proper purpose. If a director's purpose is misguided or improper, the director will breach the duty even though there is no question of personal gain or dishonesty in the generally understood sense. Accordingly, a director can be dishonest without being fraudulent.

Principally, therefore, **this duty requires directors to consider the interests of the members of JFA as a whole**. This may involve considering whether the short term or long term interest of members should be paramount.

In circumstances of insolvency or near insolvency, the duty to act in the best interests of members is overridden by a duty to act in the best interests of creditors.

(b) to exercise the degree of care, skill and diligence that a reasonable person in a like position would exercise in JFA's circumstances

The **duty of care, skill and diligence** is a subjective duty, so that essentially recklessness was (and possibly still is) required to amount to a breach. That is, to breach the duty, a director must be reckless in exercising his or her office.

Proper performance of the duties of a director will be dictated by all the surrounding circumstances including the type of organisation, the size and nature of its enterprise, the composition of its board and the distribution of its work between the directors and other officers.

The following are **key principles** that are to be applied in determining whether or not a director is fulfilling his or her duty of care, skill and diligence to JFA. Although the list is not exhaustive, **the common law requires that directors at least:**

- take **reasonable steps to place themselves in a position to guard and monitor the management of JFA;**
- acquire a **working knowledge of the fundamentals of the business of JFA;**
- keep **informed about the activities of JFA and assess the safety and properness of the business practices of management;**
- **generally monitor JFA affairs and policies**, although a detailed inspection of day to day activities need not be undertaken;
- **maintain a familiarity of the financial status of JFA** by regularly reviewing the financial statements; and
- **make enquiry into matters revealed by the financial statements** which call for enquiry.

The common law duty to act with care, skill and diligence is also reflected in the *Corporations Act* which provides that in exercise of powers, **a director must exercise “the degree of care and diligence that a reasonable person in a like position in a corporation would exercise in the corporation’s circumstances”.**

Although this provision does not expressly distinguish the respective positions of executive and non executive directors, it is considered that regard will be had to the special background, qualifications and management responsibilities of the particular director in determining whether that director has complied with the statutory duties. **The standard of care for a particular director may increase where a person is appointed to the board because of particular skills.**

- (c) **to exercise powers granted honestly and for the purposes for which they were conferred and not for collateral purposes**

Since directors of JFA are fiduciary agents, powers given to directors may only be exercised for the purposes for which they are given (**duty to act for a proper purpose**). In particular, those powers may not be exercised in order for the directors to obtain a private advantage.

Whether a particular act by directors as fiduciaries, is a bona fide exercise of their power for the benefit of JFA as a whole is generally determined by ascertaining the substantial motivating purpose for which the power is exercised and then by determining whether that purpose was proper or not.

- (d) **to avoid any actual or potential conflict between the obligations owed to JFA and a director’s personal interest or other duties**

One of the clear rules of company common law is that neither a director nor responsible officer should allow a conflict of interest to compromise their position in JFA (**duty to avoid conflict and to disclose interests**). **Accordingly, directors' "personal" interests (for example, a shareholding in another company) or other duties (for example, being a director of a Member State) and their duty to JFA must not be brought into conflict.**

This overlaps with the duty to act in good faith and for a proper purpose.

Categories of situation which give rise to conflicts of interest are:

(i) Directors or officers taking advantage of opportunity

The general rule is that a director must not use his or her position to make a profit. If he or she does, then he or she must account to JFA for the profit made. The *Corporations Act* provides for similar rules.

(ii) Directors taking advantage of an opportunity where JFA is unable

A director ***has an obligation not to profit personally from his or her position as a director, and*** not to allow a conflict to arise between his or her duty as director and his or her own self interest.

A director is disqualified from usurping for his or her own benefit, a maturing business opportunity which JFA is actively pursuing.

A director's liability to account to JFA is not unlimited and depends upon the facts of the case. It is a defence that the profits were made with the informed consent of JFA.

(iii) Directors' contracts with JFA

The general rule is that contracts made by a director with JFA are voidable at the option of JFA. This includes contracts in which directors have an indirect interest. The fairness of the contract is irrelevant, and this is applied as a strict rule.

The contract may be validated by ratification at a general meeting, provided there is full disclosure.

In addition, the *Corporations Act* requires a director to declare the nature of any direct or indirect interest he or she has in a matter that relates to the affairs of JFA.

(iv) Conflict of external duties with directors' duties

Where a director holds an office or property which creates duties in conflict with his or her duties as director of JFA, they should declare the interest at the next board meeting after they become aware of the conflict.

Where a director has a personal interest or direct or indirect pecuniary interest in a matter being considered by the JFA board he or she must, as soon as possible after the relevant facts have come to the director's knowledge, make full disclosure of the nature of the interest at a meeting of the board.

A disclosure under the paragraph above will be recorded in the minutes of the meeting of the board and the director must not, unless the President or the board otherwise determines :

— ***be present during any deliberations of the board, or***

- ***take any part in any decision of the board; with respect to that matter.***

(e) to keep confidential information obtained

Directors have a duty not to make unauthorised disclosure or use of JFA information and a duty not to disclose or exploit confidential information, such as commercially or price sensitive information or information which is confidential by virtue of a contractual arrangement.

Information is commercially sensitive where it is of specific value to the group concerned, particularly where its disclosure would allow others to “reap without sowing” or would otherwise be detrimental to JFA. In the context of JFA, this would involve any information that is of value to JFA in the sense that its disclosure might cause damage to JFA’s reputation, or disclose plans which JFA would not want revealed to its competitors or third parties. It would also involve any information determined to be confidential by the CoM or senior staff of JFA.

Directors of JFA should not reveal any discussions or meetings or documents relating to policies or plans in their initial stages.

Practicality and convenience must be taken into account. The JFA CoM should at the very least be informing its members of the major decisions which it has made and report on the reasons for these decisions. The CoM is justified in not disclosing all its activities on the basis that in doing so it is acting in the interests of JFA, by preventing information which may be detrimental to it from being revealed and potentially distorted.

Directors must remember that they have a duty to act in the interests of the JFA as a whole, which includes the interests of all members and not select members or groups of members.

Directors must always be sure that their actions are in the best interests of JFA, rather than for political expediency. This may from time to time place a director in a difficult position, for example if asked to comment by a Member State, on a matter which is confidential to JFA. The directors’ duties to JFA must always be upheld despite the relationship which may exist between the director and the Member State (for example, if the director of JFA is also a board member of the Member State).

The *Corporations Act* also imposes a statutory duty on a director not to make improper use of the information acquired by virtue of his or her office to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the company.

(f) to disclose advantages or business opportunities acquired, in the course of office

Misuse by a director of JFA’s property so as to make a personal gain or gain for any other person (for example, a company in which the director is interested) without the authority of JFA is a clear breach of a director’s fiduciary obligation (duty not to divert corporate opportunities). In particular, a director must exploit corporate opportunities for the benefit of JFA. A director who breaches this duty may be liable to account for any gain or profit made.

This duty is also reflected in the *Corporations Act* which requires a director not to make improper use of his or her position (as a director) to gain, directly or indirectly, an

advantage for himself or herself or any other person or to cause detriment to the company.

Breach of this duty may also involve a breach of a director's duty of honesty imposed by the common law and by the Corporations Act.

(g) to prevent insolvent trading by JFA.

The Corporations Act imposes a duty on directors to prevent insolvent trading.

A director will be personally liable for a company's debt if:

- (i) the person is a director of the company when the company incurs a debt;
- (ii) the company is insolvent at the time or becomes insolvent by incurring the debt or other debts incurred at that time;
- (iii) there are reasonable grounds for suspecting that the company is or will become insolvent;
- (iv) either the person is aware of grounds for suspecting insolvency, or a reasonable person in the like position in the company's circumstances would be aware; and
- (v) the person fails to prevent the company from incurring the debt.

A company is insolvent if it is not able to pay its debts as and when they become due and payable.

As a practical matter, a director should ensure that they are provided with sufficient financial information to ascertain whether the company can pay its debts. If there is any doubt, the views of the company's auditor or other suitably qualified persons should be obtained. As a minimum, details of current and projected cash flows should be provided on a regular basis.

4. Strategic Responsibilities

It is the CoM's job to establish the organisation's strategic direction. This will be reflected in the strategic plan.

'The Board's first responsibility is to ensure that the organisation has clearly established goals; objectives and strategies for achieving them; that they are appropriate to the circumstances and that they are understood by management' (Henry Bosch, *The Director at Risk*, Melbourne, Pitman Publishing, 1995 as quoted in ASC, *Governing Sport – the role of the Board*, 2005).

The CoM is to develop the strategic direction and strategic plan in partnership with the chief executive officer and staff of the organisation and the sport's key stakeholders.

The strategic direction and strategic plan must ultimately be 'owned' by the CoM.

Time should be set aside at every CoM meeting for strategic thinking including:

- developing and refining the strategic direction and strategic plan;
- monitoring and assessing performance against the strategic plan;
- analysis and assessment of external and internal factors that impact on the ability of the organisation to achieve its Key Result Areas;

- taking decisions to ensure sound, appropriate ongoing operations in implementing the strategic direction and strategic plan.

All operational plans should be consistent with the strategic direction and strategic plan.

Development and implementation of operational plans designed to achieve the strategies should be primarily the responsibility of the chief executive officer and senior staff except where the practical support of CoM members is required.

There should be a clear delegation of authority and responsibility by the CoM to the chief executive officer, key senior staff, committees, task groups and any other persons or bodies responsible for carrying out and achieving strategies in accordance with the Key Result Areas of the strategic plan.

5. Financial Responsibilities

Sound financial governance entails **setting financial policies** within which staff and other delegated representatives must carry out day to day financial management, and **monitoring the effective implementation of these policies**.

The CoM's **financial governance policies** need to address the following issues as a minimum requirement:

- budgeting and financial planning
- reserves
- investments
- general guidelines for financial management and overall financial condition
- expenditure authorities to senior staff and other delegated representative persons or groups
- employee remuneration and benefits
- protection of assets
- financial reporting required by the CoM.

To ensure appropriate financial governance procedures the CoM will operate a **Finance Committee** that will work on behalf of the CoM to:

- make recommendations to the CoM on financial policies
- ensure that the annual budget reflects the organisations strategic plan and key result areas
- provide assurance of the integrity of the organisations financial systems
- obtain management responses to issues
- provide regular reports against budget to the CoM
- carry out financial and other risk assessments
- be the CoM's link to the external auditor
- ensure appropriate reporting to stakeholders at end of financial year and other relevant times.

All CoM members share equal responsibility to monitor the financial health of the organisation. CoM members should never defer to the Treasurer's or Finance Committee's views without first considering the issue themselves.

6. Organisational Risk Responsibilities

Risk management is the means by which the CoM and management ensure that the risks faced do not result in significant loss or harm to the organisation.

Risk is an inevitable and unavoidable component in organisational growth and development, providing both opportunities and potential threats to the health of the organisation.

CoM members should have a broad appreciation of the risks facing the organisation and the likelihood of occurrence together with the potential impact of these should they occur.

The CoM will ensure that a risk management plan for the organisation is developed, implemented

and monitored.

The risk management plan will include as a minimum, identification, assessment and a plan of action for risks in the following areas:

- financial
- human resources
- reputation
- client/athlete/coach/officials/volunteers harm (member protection)
- governance
- technology
- stakeholder relations
- occupational health and safety
- harm or loss of physical assets

7. Chief Executive Officer (CEO) or Senior Staff Appointment and Management Responsibility (where no CEO)

ASC best practice guidelines encourage boards of National Sporting Organisations (NSOs) to appoint a CEO after a thorough, transparent process to assess and appoint the best person available for the position. The CEO is then directly accountable to the board being considered as the only direct employee of the board, all other staff being employed by the CEO.

In the current situation facing JFA Inc there are deemed to be insufficient resources to afford the appointment of a CEO.

Therefore the CoM rather than the CEO will provide clear guidance to senior staff members on:

- what is required of him or her in the particular role
- key strategic issues
- their role and responsibilities in implementing the key result areas of the strategic plan
- reporting and accountability expectations and requirements
- all terms and conditions of employment

Generally, the CoM through the President will communicate to senior staff members as required in relation to the administration of the organisation. Where the President is unavailable then delegation of this role is to be given expressly to a member of the Executive. Individual Directors should not normally contact employees of JFA directly – except where they are the convenor of a CoM Committee that has been given clear authority by the CoM to liaise with staff on certain matters.

8. Stakeholder Responsibility

Stakeholders are those groups and individuals who benefit in some material way from the existence of the organisation.

CoM members will operate on the principle that the information and wisdom of stakeholders in and around the organisation is a valuable commodity which CoM members need to appreciate and use.

CoM members acknowledge that there are three key groups of stakeholders:

- **Stakeholders who are legal owners** – ie members as identified in the constitution;
- **Stakeholders who are moral owners** – ie those people for whom the organisation exists but who cannot exercise the same rights as members. This may include athletes, coaches, officials and others involved with, or with an interest in, the sport;
- **Stakeholders with whom the organisation has a business relationship** – ie those individuals, companies or entities with whom the organisation establishes a contractual relationship. These include employees, funding bodies, suppliers, and general public where they as paying customers.

CoM members understand that they are accountable in the first instance to the legal owners and then to the moral owners. Accountability to stakeholders with a business relationship is determined by the nature and spirit of the relationship or business contract.

Wherever possible the CoM will seek to have stakeholders contribute to the overall governance and management of the organisation by:

- involvement in the strategic direction setting and strategic planning process
- taking part in surveys, focus groups and other forms of communication and feedback mechanisms
- ensuring regular reporting and communication on progress in implementing the organisations strategic plan and key result areas

9. Moral Responsibilities

CoM members, as trustees of the organisation, have a moral duty to the sport. This involves presenting their organisation and the sport it represents in a positive and ethical manner.

The CoM has a moral obligation to consider matters on the basis of equity and transparency and in the interests of the sport as a whole and not in preference to any one or more classes of stakeholder.

Specifically:

- (a) CoM members are required to exercise a reasonable degree of care and diligence in the exercise of their powers and discharge of their duties. ***In addition, they are expected to exhibit honesty, loyalty and candour in their relationships with JFA and with each other.***
- (b) A CoM member has an obligation to be ***independent in judgement and actions*** and take all reasonable steps to be satisfied as to the soundness of all decisions taken by the board.
- (c) CoM members are required to ***observe and comply with the relevant laws of the Commonwealth of Australia and each if its State and Territories*** (where applicable) and, whilst travelling elsewhere in the performance of their functions of office, the relevant laws of the country in which they are travelling.
- (d) CoM members have a ***duty to behave in such a manner that they do not bring JFA's or the sport of judo in Australia's reputation into disrepute. This duty involves adherence to JFA's own Complaints Tribunal requirements for good conduct and the Australian Sports Commission Codes for Good Sportsmanship for players, coaches, parents and spectators.***

10. The President, Executive and the CoM

While all CoM members bear equal responsibility for the decisions and operations of the CoM, there are practical leadership and organisational roles that should be undertaken by the President and the Executive.

The President acting in conjunction with the Executive, should identify the issues of significance to the CoM, provide the right environment for consideration of those issues and ensure that all directors have the opportunity to put their views and have them considered. A carefully structured CoM meeting must deal with routine matters quickly and efficiently, allowing time for attention to key areas of responsibility such as accountability, strategic thinking, monitoring and policy issues.

The President represents the most critical link to the organisation through his or her relationship with senior staff members. The President must be able to strike the right balance in supporting

and trusting senior staff members while retaining an objective view of the management of the organisation. Individual directors should wherever possible use the President as the appropriate link between the board and senior staff members, except where there is clear, express delegations of authority as provided for in Part 7 of this Code above.

11. Rights of CoM Members

In order to satisfy their responsibilities CoM members have a right to:

- receive or access information from management or staff through the appropriate channels, in a timely manner
- receive truthful information and responses from staff and other persons or groups to whom authority has been delegated
- access professional advice
- have their views heard by fellow CoM members
- have the business of the CoM conducted in a respectful and professional manner.