

	Policy	Office of the Company Secretary
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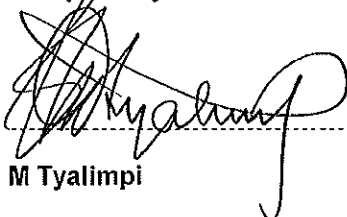
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1. Introduction

The Conflict of Interest policy document sets out the obligations of employees and directors with regard to conflicts of interest and the declaration and management of these interests.

While every employee and director has a duty to avoid conflicts of interest, these could arise in the work place.

It is necessary to have a process in place to manage these conflicts of interest effectively in order to uphold good corporate governance and organisational integrity.

2. Policy Content

2.1 Policy Statement

Eskom subscribes to ethical values and legal principles. This requires that Eskom, its employees, directors, customers, and other stakeholders act with integrity and create public confidence by conducting business in a fair, impartial and transparent manner. For this reason, Eskom makes every effort to ensure that conflicts of interest do not compromise or are not perceived to compromise its business decisions and actions.

Eskom is also committed to fair, objective and transparent business dealings, and for this reason care must be taken when accepting or offering any business courtesies. Business courtesies are used to build good relationships and are offered as a kind gesture and to show courteousness or respect and may only be offered or accepted for these reasons.

Every employee and director has the obligation to declare and manage conflicts of interest. This process is critical to ensure that the objectivity and integrity of the employee or director are not compromised, that the employee or director acts in Eskom's best interest, and that Eskom avoids situations where it can be accused of improper, unlawful or unfair conduct.

In support of its vision, values and statutory responsibilities, Eskom will take all steps within its reasonable control to manage conflict of interest throughout Eskom.

2.2 Policy Principles or Rules

2.2.1 Principle 1: Employees are prohibited from benefitting from Eskom contracts

Employees are prohibited from having any direct or indirect personal or other beneficial interest in any contract with Eskom, whether as a supplier, an advisor or by virtue of being a director or owner of a business, or in any other capacity. This includes third-party related transactions with an indirect link to an Eskom contract (for example, having a personal or beneficial interest or other interest in a business that has an interest in a supplier to Eskom).

Such interests are prohibited and cannot be regularised by managerial approval.

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2.2.2 Principle 2: Employees and directors have a duty to avoid conflicts

Every employee and directors has a duty to avoid conflicts of interest as they may affect the employee or director's ability to perform her/his duties for Eskom effectively and may adversely influence her/his judgment, objectivity or loyalty to Eskom when acting on its behalf.

The duty to declare and manage conflicts of interest is not only in keeping with good governance practices, but is also a legal obligation. It arises in terms of the common law, the Public Finance Management Act, No. 1 of 1999 (PFMA), the Companies Act, No. 71 of 2008 (in respect of directors and prescribed officers), and in terms of Eskom's policies and procedures (in respect of employees).

2.2.3 Principle 3: Related parties are prohibited from engaging in any contract where there is a conflict of interest

Related parties of employees must not engage in, nor have interests in any Eskom contract where there is a conflict of interest. This includes third-party related transactions with an indirect link to an Eskom contract (for example, having a personal or other interest in a business that has an interest in a supplier to Eskom).

In the event that related parties are in business with Eskom. The employees or directors declaration should specify this, as well as the part or division of Eskom with which business is being done. In this way it can be established whether a conflict exists or not.

Employees and directors whose immediate family members have an interest in a contract/procurement process must not be involved in any decision-making, management activity, payment or administrative activity pertaining to the contract/procurement process concerned.

The employee and director must furthermore refrain from being part of any deliberations, document preparations, execution or meetings in respect of the contract/procurement process and must not have access to information dealing with that particular matter.

If an employee or director continuously recuses him/herself from meetings and decisions due to conflicts of interest, to such an extent that the employee or director cannot fulfil his/her duties, then the employee or director may be required to secure the relinquishment of such interest or, where applicable, be transferred to another position or function within Eskom where there will be no conflict, or terminate his/her employment with Eskom. Similarly, if a conflict of interest is of such a nature that the employee or director will not be able to fulfil his/her duties effectively, then the employee or director may be required to secure the relinquishment of such interest or, where applicable, be transferred to another position or function, or to terminate his/her employment with Eskom.

A director must declare all possible conflicts of interests. The Board will always be entitled to determine that a particular interest of any director constitutes a conflict, and to recommend an appropriate way to manage such conflict.

2.2.4 Principle 4: Employees and Directors have a duty to declare all interests

All employees and directors must submit declaration of interest forms at the beginning of every financial year.

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In addition to the annual declaration, any conflict of interest must be declared as soon as the employee or director know that it has arisen, which requires that an amendment to the annual declaration be submitted within 5 (five) working days of knowing that such conflict has arisen.

Even if there are no conflicts of interest, the prescribed electronic form must still be completed and submitted by the employees and directors at the start of each financial year.

Such declaration must be submitted at the beginning of each financial year either electronically by means of the prescribed electronic form (e Form available on the eForms website) or on the prescribed manual declaration of interest form (available from the Ethics website) for those employees that do not have access to a computer. Confirmation of the submission of the declaration form shall be communicated to the employee.

The obligation is to declare all conflicts of interest, directorships, memberships and details of any related or inter-related persons that does business with Eskom, and all material personal interests, whether a conflict exists or not.

Employees and directors should disclose their interests in a particular field of business, even if it is not directly related to a specific contract/tender being considered by a committee or the Board or a committee of the Board, especially where strategies pertinent to that area of business are being discussed.

It should be noted that it is impossible to provide an exhaustive list of conflicts of interest and that the employee or director is, in most cases, in the best position to identify actual, potential and perceived conflicts of interest, which must be declared. If there is any uncertainty, individuals should contact the Ethics Office for advice.

2.2.5 Principle 5: Declaration of conflicts of interest at meetings

The fact that a conflict of interest has been declared does not mean that it has been addressed and the conflict must further be managed responsibly. Where there is a conflict of interest (actual, potential or perceived), the employee or director must refrain from being part of any deliberations, document preparations, execution or meetings, and must not have access to information dealing with that particular matter. Also, the employee or director must not participate in any decisions relating to the matter.

If an employee or director has a conflict of interest in respect of a matter to be considered at a meeting, whereby a related or inter-related party has a personal and/or financial direct or indirect interest in the matter, the employee or director:

Must disclose the interest and its general nature to the chairman and the secretary of the meeting before the matter is considered at the meeting;

Must disclose to the meeting any material information in relation to the matter that is known to the employee or director.

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2.2.6 Principle 6: All Employee and Directors must disclose Business Courtesies

Business courtesies are used to build good business relationships, and are offered as a kind gesture to show courteousness or respect. Business courtesies must only be offered or accepted for these reasons.

Employees and directors must not accept or offer business courtesies that:

- a) exceed R1500 (one thousand five hundred rand);
- b) could create the impression that their judgment or the judgment of others could be affected if the courtesies are accepted or offered; or
- c) are intended to improperly influence a person's objectivity or business decisions (conflict of interest) or to bribe someone, or to create a feeling of obligation, or to gain favour above another.

Employees and directors must complete an electronic business courtesy register (e-forms) within 7 (seven) working days of a courtesy being received or offered. Employees who do not have access to computers may use the manual business courtesy declaration register available from the Ethics Office/Ethics co-ordinator or on the Ethics website. The manual form must then be scanned and submitted on behalf of the employee by the Ethics co-ordinator as an attachment on the business courtesy e-forms and filed with HRSSU.

Employee and directors are prohibited from offering or accepting loan(s) or other benefit(s) from suppliers, unless the supplier is in the business of granting such loans or benefits and the terms and conditions of the loan that is offered to the employee is also offered to the general members of the public or a section thereof.

2.2.7 Principle 7: Disclosure of information

All employees and directors of Eskom must not disclose or use any information of Eskom or any information of third parties obtained through the carrying out of his/her duties for Eskom for any purposes other than to fulfil his/her Eskom duties.

2.2.8 Principle 8: Employment of relatives/romantic relationships

Employees must not be appointed to positions where, related or inter-related persons will be reporting to each other. In cases where this situation exists, one of the employees will have to be transferred to another position or function where the employee will not be in a reporting structure with the related or inter-related persons.

Employees should refrain from getting involved in romantic relationships with managers and/or subordinates, and where this exists one of the employees may have to be transferred to another position or function to effectively manage the conflict of interest.

2.2.9 Principle 9: Conflicts of Interest relating to Procurement processes

Appropriate disclosure of interests must be made in writing and monitored throughout the entire procurement process in line with the Procurement and Supply Chain Management policies, procedures, practice notes and supplier declaration forms as well as the declaration of interest procedure.

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2.2.10 Principle 10: Conflicts relating to Human Resources processes

Conflicts of interest can also arise in certain Human Resources processes, for example, during the recruitment process as well as short listing of candidates and reference checking. All employees who form part of the recruitment process, especially the interview panel, should declare/confirm in writing whether any of the applicants are known to them to the extent that may result in a conflict, and these written declarations should be retained.

2.2.11 Principle 11: Prohibition of Conflicting Interests

Employees are required to perform all their duties and responsibilities in a professional manner and to the best of their ability. In addition, they must devote the whole of their working time, attention and abilities to the discharge of their duties and may not be engaged or take part, whether as an employee or in any other capacity, in any other business or entity without the appropriate managerial approval for such private work prior to the engagement of the private work.

Employees should avoid conflicting interests as they may affect the employee's ability to perform his/her Eskom duties effectively.

For example, if an employee performs private work during office hours, the private work (interest) is in conflict with the employee's duty to do Eskom work. This results in unethical behavior, as the employee may not act in Eskom or its stakeholders' best interest. Conflicting interests must not be confused with a conflict of interest, which arises when an employee or director's objectivity in decision-making is affected by personal interests.

3. Supporting Clauses

3.1 Scope

3.1.1 Purpose

The purpose of this policy is to set out the principles and the guidelines for managing the conflict of interest of employees and directors in Eskom and its subsidiaries. These interests could include actual, perceived and potential conflicts of interest.

3.1.2 Applicability

This policy applies to all employees and directors of Eskom Holdings SOC Limited and its subsidiaries. In the event of a conflict between other policies dealing with the issue of conflicts of interest and this policy, this policy will take precedence as far as conflicts of interest are concerned.

3.1.3 Effective date

This policy shall be effective from the date of its authorisation.

3.2 Normative/Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

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3.2.1 Normative

- [1] Code of Ethics; 'The Way', 32-527
- [2] Disciplinary Code, 32-1112
- [3] The Companies Act, Act 71 of 2008
- [4] Procurement and Supply Chain Management Policy, 32-1033
- [5] Whistle-blowing Policy, 32-250.

3.2.2 Informative

- [1] ISO 9001 Quality Management Systems.
- [2] The Constitution of the Republic of South Africa
- [3] The Protocol on Corporate Governance in the Public Sector (2002)
- [4] Prevention and Combating of Corrupt Activities Act (No 12 of 2004)
- [5] King Code and Report on Governance for South Africa 2009 (King IV)
- [6] Public Finance Management Act (No 1 of 1999) (PFMA)
- [7] International standards, including the OECD Guidelines and the UN Convention on Prevention of Corruption.

3.3 Definitions

The words used in this policy have the meaning set out below and appear in *italics* throughout this document:

3.3.1 Business courtesies mean a gift or favour to an Eskom employee or director from a person or an entity, for which fair market value is not paid by the recipient. A business courtesy may be a tangible or an intangible benefit, such as non-monetary gifts, meals, drinks, entertainment, hospitality, recreation, attendance prizes, transportation, discounts, tickets, passes, promotional items, or the use of a donor's time, materials or equipment.

3.3.2 Companies Act means the Companies Act, Act 71 of 2008, as amended from time to time, together with its regulations and schedules.

3.3.3 Conflict(s) of interest:

A conflict of interest arises when one's personal interests, personal financial interests or any other interests, **affect, or could be perceived to affect, or has the potential to affect**, one's objectivity and discretion and/or the objectivity and discretion of another in performing Eskom duties or making decisions on behalf of Eskom. This means that an employee or director is in a position to make a decision (or influences a decision) that is not fair and objective in order to benefit personally, or to benefit related and/or inter-related persons.

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A personal interest may be an actual or potential, direct or indirect interest of an employee or a director, or of a related person or an inter-related person of the employee or director, in any business, entity, undertaking, or investment, as a shareholder, director, associate, member, adviser/consultant, prescribed officer or in any other capacity.

A personal financial interest when used with respect to any person means a direct material interest of that person or of a related person or inter-related person of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed. This does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment.

It is important to note that a conflict of interest can arise in various situations and are not confined to interests in contracts or direct financial interests.

Situations where conflicts could arise include, but are not limited to the following, which must be dealt with in terms of this policy:

- a) the acceptance and/or offering of business courtesies;
- b) employees and directors having private business interests in entities that do, or might do business with Eskom;
- c) employees and directors having affiliations with non-profit organisations that receive funding or any form of aid from Eskom; and
- d) private, professional, political, academic or other interest that may conflict with Eskom's interests.

3.3.4 Conflicting interests: means an interest that affects the employee or director's ability to perform his/her Eskom duties effectively. For example, if an employee performs private work during office hours, the private work (interest) is in conflict with the employee's duty to do Eskom work. This results in unethical behaviour, as the employee or director does not act in Eskom or its stakeholders' best interest. Conflicting interests must not be confused with a conflict of interest, which arises when an employee or director's objectivity in decision-making is affected by personal interests.

3.3.5 Director: means a member of the board of Eskom, or a board of its subsidiary, or an alternate director of such board and includes a person occupying the position of a director, by whatever name designated, or a prescribed officer; or a person who is a member of a committee of the board or of the audit committee, irrespective of whether or not the person is also a member of such board.

3.3.6 Employee(s): also referred to as staff members. These include individuals employed by Eskom on a permanent basis, contract labour, temporary employees, part-time employees, casual employees, occasional employees, fixed-term contractors, learners, and others acting for Eskom or its subsidiaries.

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3.3.7 Eskom: means Eskom Holdings SOC Limited and its subsidiaries.

3.3.8 Juristic person: includes a foreign company and a trust, irrespective of whether or not it was established within or outside the Republic of South Africa.

3.3.9 Knowing or Knows:

Knowing or knows when used in respect of a person, and in relation to a particular matter, means that the person either:

- (a) had actual knowledge of the matter; or
- (b) was in a position in which the person ought reasonably to have –
 - (i) Had actual knowledge;
 - (ii) Investigated the matter to an extent that would have provided the person with actual knowledge; or
 - (iii) Taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter.

3.3.10 Manager: includes a supervisor and means any employee with staff reporting directly to him/her.

3.3.11 Person: includes a juristic person.

3.3.12 Prescribed officer: means a person who, within a company, performs any function that has been designated by the minister in terms of section 66 (10) of the Companies Act.

3.3.12.1 it is a person who, despite not being a director of a particular company, if that person

- (a) exercises general executive control over the management of the whole or a significant portion of the business and activities of the company; or,
- (b) regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business activities of the company.

3.3.12.2 the above definition applies irrespective of any particular title given by the company

- (a) to an office held by the person in the company; or
- (b) to a function performed by that person for the company.

3.3.13 Private work: includes private interests, and means any employment or commercial activity, embarked on by an employee outside the scope of his/her Eskom employment.

3.3.14 Procurement and supply chain: means all activities related to the procurement and disposal of assets and services and include business functions of procurement planning, purchasing, inventory control, transport, receiving, incoming inspection and salvage operations.

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3.3.15 Public Finance Management Act: means the Public Finance Management Act, 1 of 1999, as amended from time to time, together with its regulations and schedules.

3.3.16 Related and inter-related person(s) and control:

Related:

- (1) When used in respect of two persons, means persons who are connected to one another in any manner contemplated below:
- (a) an individual is related to another individual if they—
 - (i) are married, or live together in a relationship similar to a marriage; or
 - (ii) are separated by no more than two degrees of natural or adopted consanguinity or affinity;
 - (b) an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with the definition of control as set out in subsection (2) below; and
 - (c) a juristic person is related to another juristic person if—
 - (i) either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with subsection (2) below;
 - (ii) either is a subsidiary of the other; or
 - (iii) a person directly or indirectly controls each of them, or the business of each of them, as determined in accordance with subsection (2) below.

"related person", when used in reference to a director, has the meaning set out in 3.3.16, but also includes a second company of which the director or a related person is also a director, or a close corporation of which the director or a related person is a member.

Inter-related: When used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in subsection 1 above, and one of them is related to the third in any such manner, and so forth in an unbroken series.

Control:

- (2) For the purpose of subsection (1) above, a person controls a juristic person, or its business, if—
- (a) in the case of a juristic person that is a company—
 - (i) that juristic person is a subsidiary of that first person, as determined in accordance with the Companies Act¹; or
 - (ii) that first person together with any related or inter-related person, is—
 - (aa) directly or indirectly able to exercise or control the exercise of a majority of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or
 - (bb) has the right to appoint or elect, or control the appointment or election of, directors of that company who control a majority of the votes at a meeting of the board;

¹ Section 3(1)(a)

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- (b) in the case of a juristic person that is a close corporation, that first person owns the majority of the members' interest, or controls directly, or has the right to control, the majority of members' votes in the close corporation;
- (c) in the case of a juristic person that is a trust, that first person has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees, or to appoint or change the majority of the beneficiaries of the trust; or
- (d) that first person has the ability to materially influence the policy of the juristic person in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise an element of control referred to in paragraph (a), (b) or (c) of subsection (2).

3.3.17 Stakeholders: mean any group, individual, or thing (for example, the environment) that can affect, or is affected by, the achievement of the organisation's objectives. Eskom's stakeholders include, inter alia, its shareholder, Board of Directors, employees, trade unions, customers, suppliers, the public, the environment and the communities in which it operates.

3.3.18 State Owned Entity: means any entity owned or established by government at national, provincial or local government level, including but not limited to all the public entities identified in schedules 2 and 3 of the PFMA or any municipal entity established in terms of the Municipal Systems Act or the Municipal Finance Management Act.

3.3.19 Supplier: means any person or entity that does business with Eskom or tenders to do business with Eskom, or is registered on Eskom's supplier database, such as consultants, contractors, sub-contractors and providers of goods and services

3.4 Abbreviations

Abbreviation	Explanation
GCE:	Group Chief Executive
EXCO	Executive management Committee
GE	Group Executive
HR:	Human Resources

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3.5 Roles and Responsibilities

3.5.1 General responsibilities of managers and directors

- 3.5.1.1** Managers and directors need to be aware that their seniority results in perceptions of conflict more readily, and their conduct is, therefore, subject to greater scrutiny.
- 3.5.1.2** Directors must exercise the powers and perform the functions of a director in good faith and for a proper purpose, in the best interests of the company, and with the degree of care, skill, and diligence that may reasonably be expected of a person carrying out the same functions in relation to the company as those carried out by that director and having the general knowledge, skill, and experience of that director.
- 3.5.1.3** In addition to the general obligations that apply to all managers and directors, their conflicts of interest must be declared and appropriately managed within their areas of responsibility.
- 3.5.1.4** Managers, therefore, need to apply their minds to the declaration of interest forms before the forms are signed off and the declarations recorded in the central database.
- 3.5.1.5** All managers should take reasonable steps to know of and appropriately manage the conflicts of interest pertaining to their direct reports.
- 3.5.1.6** Failure to manage employees or directors according to the interests that they have declared could be regarded as negligence.
- 3.5.1.7** Managers need to apply their minds when approving applications for private work and the board must apply its mind in assessing the impact of the number of directorships that a director holds to ensure that these do not create conflicts of interest or conflicting interests.

3.5.2. Ethics Office responsibilities

- 3.5.2.1** Ensure that specific ethics requirements are communicated timeously.
- 3.5.2.2** Monitor and advise on the implementation of this policy.

3.5.3 Responsibilities of the Legal and Compliance Department

- 3.5.3.1** Monitor and report on compliance with this policy by the respective groups/divisions/subsidiaries.
- 3.5.3.2** Provide legal advice on complex conflicts of interest including management of conflict of interests for Board and Exco.

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3.5.4 Responsibilities of Assurance and Forensic Department

- 3.5.4.1** Provide assurance on the internal control system for managing conflicts of interest in Eskom.
- 3.5.4.2** Investigate and report on non-compliance matters referred to it by the Ethics Office.

3.5.5 Responsibility of Employee Relations

Ensure that appropriate action in terms of Eskom's processes is taken against employees who have failed to comply with this policy.

3.6 Process for Monitoring

3.6.1 Declarations submitted by employees

- 3.6.1.1** Managers are responsible for ensuring that employees renew their declarations in April each financial year and that new employees submit their declarations within 10 working days of joining the organisation, as well as for assisting their staff members in effectively managing conflicts of interest declared.
- 3.6.1.2** The ethics coordinators in each division or subsidiary are responsible for monitoring submissions for all employees and reporting the submission statistics to the Ethics Office and respective Ethics sponsors. This is done at the end of each month from April to June to ensure 100% divisional and subsidiary submission for the target group by end June each year.
- 3.6.1.3** Declarations submitted by Eskom's Executive Management Committee (Exco) must be approved by the Group Chief Executive and the submissions monitored by the Ethics Office.

3.6.2 Declarations submitted by directors of Eskom

- 3.6.2.1** The monitoring of declarations submitted by the directors is the responsibility of the chairman of the respective boards, supported by the Company Secretary of the entity.
- 3.6.2.2** The monitoring of declarations submitted by directors and employees of subsidiaries who do not have access to Eskom's electronic declarations of interest system, is the responsibility of the subsidiary's chairman of the board and its executives respectively.

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3.7 Communication

This policy shall be communicated via the following channels:

- a) Eskom intranet
- b) Ethics awareness programmes
- c) During induction of new employees
- d) Ethics training sessions

3.8 Non-compliance

3.8.1.1 Failure to comply with the obligations set out in this policy is a breach of this policy and could amount to misconduct in terms of Eskom's Disciplinary Code and Procedure. It may also amount to a contravention of the law in terms of the common law, the PFMA, or the Companies Act (for directors and prescribed officers), depending on the particular circumstances.

3.8.1.2 If an employee fails to disclose a conflict of interest, any other employee who is aware of the conflict should declare it to his/her senior manager or the Ethics Office. Employees who make such disclosures in good faith will have the necessary protection in terms of the Protected Disclosures Act (No. 26 of 2000).

4. Authorization

This document has been seen and accepted by EXCO

5. Revisions

Date	Rev.	Remarks
July 2001	0	A directive with reference number ESKADABK8 was registered on the Eskom Documentation Centre database. No formal document was submitted for publication.
September 2006	1	A policy was put together to replace ESKADABK8. The policy was allocated with reference number 32-173 and formatted in compliance with the Eskom documentation requirements.
November 2010	2	Revised to align with the new Companies Act and the King Report on Corporate Governance for 2009. and also to incorporate specific requirements from Board and feedback from ethics co-ordinators and key stakeholders within the organisation.
July 2014	3	Periodic review

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Date	Rev.	Remarks
May 2019	4	Periodic review that aligns the policy with the King IV Report, changes in the internal and external environment that has had an impact on the manner in which conflicts of interest should be managed go forward in the organisation as well as incorporation of review done by Bowman.

6. Development Team

The original policy was developed with inputs from the following individuals:

- Executive Management Committee
- Eskom Board

7. Acknowledgements

- Governance and Ethics Office
- Executive Management Committee
- Ethics coordinators in the respective groups/divisions/subsidiaries
- Procurement and Supply Chain Management
- Organised Labour
- Managerial-level employees
- Legal and Compliance
- Language Services Team
- Bowman Attorney's.

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