

ccNSO Internal Procedure: General Statement of Interest & ccNSO [Council] Conflict of Interest

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<https://gns0.icann.org/sites/default/files/file/field-file-attach/op-procedures-24oct19-en.pdf>

Board Policy Conflict of Interest Procedure:

<https://www.icann.org/resources/pages/governance/coi-en>

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Definitions

Country Code Names Supporting Organization (ccNSO) Group:

1. the ccNSO Council, or
2. a work team, working group, committee or other group such as a cross-community group formed by and/or chartered by the ccNSO Council.

Member or Participant: A "Member or Participant" is a person who is involved in a ccNSO Group.

Statement of Interest: A "Statement of Interest" is a declaration by a Member or Participant in which the Interests of the individual are recorded that may affect the individual's judgment, on any matters to be considered by the ccNSO Group. For purposes of this Guideline "**Interests**" are those specified interests, relationships, arrangements, and affiliations that may affect the judgments of the Members or Participants in their involvement in the ccNSO Groups.

Material Interest: A "Material Interest" is an important interest and is generally, but not always, financial in nature. However, in the legal sense, the interest needs to be substantial or of consequence.

Potential Conflict of Interest: "Potential Conflict" or "Potential Conflict of Interest" means any one or more of the following:

(a) a direct or indirect Financial Interest in a transaction, contract or arrangement under consideration by the ccNSO, Council, WG or a member of a Councillor's Family;

(b) a close personal relationship between the Councillor, or a member of a Councillor's Family, with an individual who is, directly or indirectly through business, investment, or Family, a party to a transaction, contract or arrangement under consideration by the Council (*for example travel funding, or an appointment with travel funding or other material benefits involved*).

Potential Perceived Conflict: "Potential Perceived Conflict" exists when a reasonable person, knowing the relevant facts, could conclude that the Councillor's private interests could adversely impact the Councillor's ability to act fairly and independently, or is opposed to, the best interests of the ccNSO.

Conflict of Interest: A "Conflict" or "Conflict of Interest" arises when the Council according to the relevant procedures determines that a Councillor has disclosed a Potential Conflict that may, in the judgment of a majority of the Disinterested members of the Council, adversely impact the Councillor's ability to act fairly and independently and, or is opposed to, the best interests of the ccNSO.

Conflicted Person: "Conflicted Person" means a Councillor who Disinterested Councillors have determined to have a Conflict of Interest.

Disinterested. "Disinterested" means not having a Potential Conflict or Potential Perceived Conflict with respect to a transaction, contract, arrangement, policy, program or other matter under consideration by the ccNSO.

Interested Person. An "Interested Person" is a Councillor who has a Potential Conflict or Potential Perceived Conflict or another person who exposes that a Councillor has a Potential Conflict or Potential Perceived Conflict with respect to a particular transaction, contract, arrangement, policy, program or other matter under consideration by the Council.

Financial Interest. A "Financial Interest" is the monetary reward for a service rendered, a monetary gain for commercial dealings, or the ownership of shares with the potential for monetary profit.

Part A: ccNSO Statement of Interest Process

1. Background & Purpose

Good Governance is a foundation for cohesion and stability in any organization and, in turn, provides pillars that give credibility to the organization and its members. Within this community, the pillars of Participation and Inclusion are strong and from these flow legitimacy and voice. Since 2003, the ccNSO's primary focus has been on performance and direction. It is time to concentrate on enhancing accountability and fairness, starting with transparency.

The tools we look at to achieve this do not have to be complex. While this process began with looking solely at Conflict of Interest, the vast number of active participants who give their time representing their TLDs, do not require as formal a mechanism as a Conflict of Interest. In most situations and roles within the ccNSO, a means of self-declaration and awareness should suffice.

This approach is in line with the spirit of this community. It is also a proactive step instead of a reactive step. A Statement of Interest process is an easy-to-implement transparency mechanism which results in accountability and fairness while improving the Good Governance of this community.

2. Objective

The goal of this Guideline is to document responsibilities and procedures regarding the content, creation, timely update, accuracy, completeness, and compliance of Statements of Interest as defined above.

3. Applicability

Each Member or Participant is responsible for ensuring that they comply with this Guideline by providing a Statement of Interest and keeping it up-to-date. All completed Statements of Interest shall be posted and made public through the ccNSO website.

Failure to comply with these procedures is covered in Section 7 below.

The ccNSO Secretariat administers this process. Administration includes, but is not limited to, informing new members of groups of the Guideline and requirements, ensuring availability of the Statements of Interest, and following up on any requests from the Chairs of ccNSO Groups about this procedure.

4. Exemptions

ICANN Staff members and contractors are exempt from submission of a Statement of Interest. The exemption does not extend to Staff who do not work for ICANN exclusively.

5. Procedures with respect to Statement of Interest

5.1. Timelines

To participate in a ccNSO Group, Members and Participants are required to:

- Submit to the ccNSO Secretariat a Statement of Interest electronic form (section 5.2),
- Update the statement at least once a year or whenever there is a material change.

Whenever there is a material change in Interest of the Member or Participant, the Statement of Interest has to be updated before the next meeting or within ten business days of the material change, whichever is sooner.

At the beginning of each meeting of a ccNSO Group, the Chair of that ccNSO Group shall ask all meeting attendees whether there is an update to their Statements of Interest. If so, such changes shall be recorded in the meeting notes at which the Member or Participant advises the attendees of such change. This should be posted as soon as possible along with the updated Statement of Interest.

5.2. (Electronic) Form and Publication

To ensure consistency, the ccNSO Secretariat shall develop, maintain, and make available an electronic Statement of Interest form, including procedures and instructions to complete the form online. The Secretariat shall also provide an alternative arrangement (e.g. email) if a Member or Participant cannot complete the form online (see Annex A).

5.3. Content of the Form

Members and Participants have to complete all sections of the Statement of Interest form as specified below to get involved in a ccNSO Group:

1. Current employer(s) and position(s),
2. Category of work performed at #1 above,
3. If any financial relationship goes beyond a *de minimus* stock ownership, with any company or person that has a financial relationship or contracts with ICANN,
4. Involvement in the ccNSO Group as a representative of any individual or entity, whether paid or unpaid. If participating as a representative, the name of the represented individual or entity should be provided, unless professional and/or ethical obligations prevent disclosure of this information. If obligations prevent disclosure, this then has to be stated.
5. Any other relevant arrangements, interests, or benefits as requested in the following two situations:
 - i. Any material interest in the outcome of ccNSO policy development processes. If affirmative, the material interest in ICANN ccNSO policy development processes and outcomes has to be described.
 - ii. Any arrangements/agreements between the Member or Participant and any other group, constituency or person(s) related to (work of) the ccNSO Group. If affirmative, describe the arrangements/agreements and the name of the group, constituency, or person(s).

6. Completeness and Accuracy

6.1. Completeness

The ccNSO Secretariat shall review each Statement of Interest on completeness. Suppose the Secretariat has a reason to believe that the documentation is incomplete. In that case, the Member or Participant shall be notified and requested to provide the omitted or missing information within 10 business days. If there are extenuating circumstances, the Member or Participant should explain why the document is incomplete. Suppose the matter cannot be satisfactorily resolved within a reasonable period. In that case, the Secretariat shall raise the issue with the Chair of the relevant ccNSO Group, or person designated by the ccNSO Group in case the Statement of Interest of the Chair is incomplete, pursuant to section 6.3.

6.2. Accuracy

Suppose there are concerns raised about the accuracy of a Member's or Participant's Statement of Interest, including whether an interest may affect the Member's or Participant's judgment concerning a pending matter that has been disclosed. In that case, it shall be brought to the attention of the Member or Participant and the Chair of the relevant ccNSO Group or a person designated by the ccNSO Group in case the Statement of Interest of the Chair is possibly in-accurate. The Member or Participant will have 10 business days to resolve the matter, before it will be handled by the Chair of the relevant ccNSO Group or person designated by the ccNSO Group in case the Statement of Interest of the Chair is possibly in-accurate, and handled pursuant to section 6.3

6.3. Procedure to resolve in-correctness or in-completeness

Suppose concerns about the completeness and/or accuracy of a Statement of Interest persist after reasonable attempts have been made to resolve the matter with the Member or Participant. In that case, the matter shall be brought to the attention of the Chair of the relevant ccNSO Group [and handled according to the decision-making processes and procedures described in the ccNSO relevant Conflict of Interest (Col) procedure]. At each step of the Col procedure, every effort should be made to resolve the completeness and/or accuracy concerns by working cooperatively with the Member or Participant.

7. Failure to Comply

7.1. Requirement to Participate

A Statement of Interest form must be submitted by each Member or Participant per these procedures as a prerequisite to be involved in a ccNSO Group. If a Member or Participant fails to update a Statement of Interest by 30 April of each year or whenever there is a material change, the Chair of the relevant ccNSO Group may temporarily suspend attendance of calls or meetings by that person until the Statement of Interest is updated. Involvement shall not be suspended if the matter is subject to the procedure outlined in section 6.3 and a final determination is made under that process.

7.2. Suspension

If after following the procedure of section 6.3 it is determined that a Member or Participant has not complied with these procedures, the ccNSO Council Chair, in consultation with the Vice-Chairs, may terminate the involvement of the Member or Participant in a ccNSO group, except for the ccNSO Council, until the failure to comply has been remedied. The ICANN General Counsel and ccNSO Council will be notified when such actions are taken as a matter of protocol. The decision to take this step will be recorded in the ccNSO Council decision repository.

Part B: ccNSO [Council] Conflict of Interest Procedures

1. Introduction

It is recognized that the general Statement of Interest Procedures is a proactive step, instead of a reactive measure, and an easy-to-implement transparency mechanism which results in accountability and fairness while improving the Good Governance of this community.

Some Council decisions or other matters under discussion by the Council may give rise to a potential conflict of interest, or potential perceived conflicts (Decision Areas Potential Conflict of Interest). These conflicts can seriously damage the community's confidence in the ccNSO Council and working relations. The ccNSO Council Conflict of Interest procedure has been developed to prevent these situations from escalating, enhance accountability and ensure fairness .

Overview Decision Areas Potential [Council] Conflict of Interest

Decision Area potential Col	ROLE & IMPACT	- ROLE - Councillor	IMPACT Col on Councillor	- ROLE - WG or Committee Member	IMPACT Col on WG Member	- ROLE - Representative ccTLD	IMPACT Col on representative
Chair & Vice-Chair Election		Candidate	<i>Abstain</i>	Candidate	<i>Abstain</i>	NA	
Travel funding		Applicant, Councillor with Financial Interest with candidate	<i>Abstain</i>			Applicant	NA
Appointee external committee with travel funding		Candidate	<i>Abstain</i>			Candidate	NA
Appointee external committee no travel funding		Candidate	<i>Abstain</i>			Candidate	NA
Council decisions Council Elections		Candidate	<i>Abstain</i>	NA		Candidate	NA
Council decisions Board Nominations		Candidate, Councillor with Financial Interest with candidate	<i>Recuse</i>	NA		Candidate	NA
Appointment WG Member		Candidate	<i>Abstain</i>			Candidate	NA
Council decisions PDPs			<i>Unrestricted</i>	NA		NA	NA
Members vote PDP		NA					<i>Unrestricted</i>
Veto vote membership		NA		NA			<i>Unrestricted</i>

Overview of Impact of Col Restrictions due to Col

1. **Unrestricted** (No Restriction)
2. **Abstain** from voting (participates in discussion)
3. **Recuse** from discussion and voting (step out)

2. Duty to Disclose

(a) In connection with any of the identified decision areas being considered by the ccNSO Council in section 1, a Councillor shall promptly disclose any Potential Direct Conflict that may give rise to a Conflict of Interest with respect to the identified area of decision. Such disclosure shall be made to the ccNSO Secretariat with a copy to the Office of the General Counsel of ICANN setting forth, in writing, all relevant facts relating to the Potential Direct Conflict. When in doubt, Councillors shall disclose matters as Potential Conflicts.

(b) Potential Perceived Conflicts can seriously damage the community's confidence in the ccNSO. A Councillor shall promptly disclose any Potential Perceived Conflict, which shall be treated as equivalent to a Potential Conflict until the doubt is removed and the matter is determined after investigation of all the relevant facts in accordance with this COI Guideline. When in doubt, a Councilor shall disclose such issues as Potential Perceived Conflicts and all relevant facts relating to the Potential Perceived Conflict to the Secretariat with a copy to the Office of the General Counsel of ICANN.

(c) If any person has reason to believe that a Councillor has a Potential Conflict, the Councillor or other person with such belief shall inform the Secretariat with a copy to the Office of the General Counsel of ICANN, including disclosing all relevant facts relating to it.

(d) The Conflicted Person shall provide the Secretariat - with a copy to the Office of the General Counsel of ICANN - an updated Statement of Interest when any disclosure is made according to Section 3(a). The disclosure to the Secretariat with a copy to the Office of the General Counsel of ICANN of a Potential Conflict shall be made promptly and pursuant to the ccNSO Internal Procedure on Statement of Interest as adopted by the ccNSO Council and updated from time to time.

3. Determining Whether a Conflict of Interest Exists

(a) After disclosure of a Potential Conflict by an Interested Person, the ccNSO Secretariat will promptly inform the Disinterested Councillors of the Potential Conflict and provide them with all information provided by the Interested Person(s) related thereto. At the discretion of the Disinterested members of the Council, the Interested Person(s) may present further information regarding, or otherwise discuss with such members, the Potential Conflict.

(b) Thereafter, in the absence of the potential Conflicted Person, the Disinterested members of the Council shall determine whether or not the circumstances disclosed by the Interested Person(s) regarding the Potential Conflict constitute a Conflict of Interest. The determination by Disinterested members of the Council in this regard is conclusive and may not be challenged by the Interested Person(s). Such determination shall be made and recorded before the Disinterested Councillors decide on the matter at hand, giving rise to such Potential Conflict.

4. Procedures for Addressing a Conflict of Interest

(a) If the Disinterested members of the Council determine that a Conflict of Interest exists, the Conflicted Person may present to the Disinterested members of the Council regarding the Conflict of Interest. After any such presentation the Conflicted Person shall leave the meeting and shall not be present during any discussion of the Conflict of Interest.

(b) The Chair of the Council (if Disinterested, or other person designated by the Council in case the Chair is conflicted) or a majority of the Disinterested members of the Council, may, if appropriate, appoint a Disinterested person or committee to investigate alternatives or modifications, as applicable, to the proposed arrangement, internal procedure, program or other matter giving rise to the Conflict of Interest. The findings shall be reported to the Disinterested Councillors at or before the next Council meeting and before the Disinterested Councillors decide on the matter giving rise to such Conflict of Interest.

(c) If alternatives for the proposed arrangement, or internal procedures have been investigated, including the findings of any person or committee appointed pursuant to Section 4(b), the Disinterested members of the Council shall determine whether the ccNSO can obtain with reasonable efforts a more advantageous arrangement, internal procedure, program or other matter in a manner that would not give rise to Conflict of

interest or would alleviate or mitigate it. Such determination shall be reported to the Disinterested Councillors at the next Council meeting and prior to the Disinterested Councillors approving or adopting, as applicable, the arrangement, internal procedure, program or other matter giving rise to such Conflict of Interest.

5. Duty to Abstain

(a) After disclosing the existence of a Potential Conflict, Interested Persons shall refrain from using their influence (either at or outside a Council meeting) to sway the Council's handling of the matter that gave rise to the Potential Conflict.

(b) Each Councillor must abstain from voting on any matter in which the Councillor has a Conflict of Interest.

(c) In the event of such an abstention, the abstaining Councillor shall state the reason for the abstention, which shall be recorded.

(d) No Councillor may participate in a Council committee or Council deliberations on any arrangement, internal procedure, program or other matter in which they have a Conflict of Interest without first disclosing the Conflict of Interest (and otherwise complying with the requirements of this COI internal procedure) and until a majority of Disinterested members of the committee or a majority of the Disinterested Councillors agree on whether and in what manner the Conflicted Person may participate.

6. Violations of the Conflicts of Interest Policy

(a) If the Disinterested members of the Council or Council Committee have reasonable cause to believe a Councillor has failed to disclose a Potential Conflict, the Council or Council Committee shall 1) inform the Council and the Secretariat with a copy to the Office of the General Counsel of ICANN, and 2) initiate the procedures described above.

(b) If the Disinterested members of the Council or Council Committee determine that a Councillor has intentionally failed to disclose a Potential Conflict, the Disinterested members of the Council or Council Committee shall make recommendations to the Disinterested Councillors for corrective action. The Disinterested Councillors shall review the Disinterested members of the Committee's recommendation and shall take such corrective action as they deem appropriate, including, but not limited to, informing the ccNSO Membership of intentional failure of not disclosing a Potential Conflict.

7. Records of Proceedings

The written or electronic records of the Council relating to Conflicts of Interest shall contain:

(i) If agreed by the person(s), the names of the Interested Person(s), who exposed, disclosed or otherwise were found to have a Conflict or Potential Conflict in connection with a proposed arrangement, policy, program or other matter. If a person does not agree, that person will be referred to as "Anonymous";

(ii) The nature of the Potential Conflict;

(iii) Any action taken to determine whether a Conflict of Interest was present;

(iv) The Council's decision as to whether a Conflict of Interest in fact existed;

(v) The names of the persons who were present for discussions and votes relating to the arrangement, policy, program or other matter;

(vi) The content of the discussion, including any alternatives to the arrangement, policy, program or other matter; and

(vii) A record of any votes taken in connection therewith.