



**Fortescue**  
The New Force in Iron Ore

**Policy**



## **Directors Conflict of Interest Policy**

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Fortescue Metals Group Limited

**August 2018**

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Directors Conflict of Interest Policy			
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## 1. INTRODUCTION

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The Board of Directors (Board) of Fortescue Metals Group Limited (Company) has adopted a Directors' Code of Conduct which sets out the general principles the Directors should comply with as directors of the Company. The Directors' Code of Conduct includes an overview of the procedures to be followed by Directors if an actual or perceived conflict of interest arises.

The purpose of this Policy is to supplement the Directors Code of Conduct by providing more detailed guidance to the Board on the procedures to be followed if a Director has, or there is a real and sensible possibility that the Director may have:

- a material personal interest in a matter that is being discussed or decided upon at a Board meeting;
- a conflict or perceived conflict between the duties he or she may owe to another company of which he or she is a director or salaried executive, and his or her duties as a Director of the Company in considering a matter at a meeting of the Board;
- any other business or relationship that could materially interfere with (or could reasonably be perceived to materially interfere with) the independent exercise of their judgement;

(each a conflict of interest).

This Policy sets out the Directors' legal duties and obligations under the Corporations Act to disclose material personal interests. This Policy also imposes an obligation on each Director to notify the Board of any other conflicts of interest that are not otherwise notifiable under the Corporations Act.

When does the Policy apply?

The Policy applies to Directors whenever they are acting in their capacity as a Company Director. Each Director is responsible for ensuring they understand this Policy and the protocols set out in this Policy for managing conflicts of interest.

How can breaches be reported?

Any breaches of this Policy should be reported to the Chairperson of the Board or the Company Secretary.

## **2. NOTIFICATION AND MANAGEMENT OF CONFLICTS OF INTEREST**

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Each Director must notify the Board or the Chairperson in writing, immediately upon becoming aware of an actual or potential conflict of interest regardless of whether that interest is notifiable under the Corporations Act (Notifiable Interest). A Director who is in any doubt about whether an interest is a Notifiable Interest should contact the Chairperson or the Company Secretary to discuss the matter and/or seek independent legal advice.

## **3. CONFLICT ASSESSMENT**

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3.1 The Board is entitled to make its own assessment as to whether a Director has a conflict of interest concerning a matter under discussion (Conflict Assessment). The Director the subject of the Conflict Assessment must withdraw from the Board meeting to provide the other Board members with a reasonable opportunity to undertake the Conflict Assessment and make a decision in the Director's absence. Prior to withdrawing from the Board meeting, the Director may provide the Board with information to assist the Board in determining whether the Director has a conflict of interest in respect of the relevant matter.

3.2 A Director is deemed to have a conflict of interest where:

- (a) the Company or the Director is notified by a Government Agency that the Director or an Associate of the Director has a potential conflict of interest;
- (b) the Director is a director or salaried executive of the relevant Entity; or
- (c) the Director is nominated to the Board; by, or is otherwise associated with, a Commercial Counterparty and there are current or proposed commercial discussions between the Company and the Commercial Counterparty, an Associate of the Commercial Counterparty or an Entity that has a commercial or competitive relationship with the Commercial Counterparty, unless the Board resolves otherwise.

3.3 If the Board considers the Director has a conflict of interest concerning the relevant matter under discussion, the conflict of interest will be a Notifiable Interest for the purposes of this Policy. Where this occurs, the Conflicted Director must disclose the nature and extent of the Notifiable Interest in accordance with paragraph 2.

## **4. PROTOCOL IN RESPECT OF NOTIFIABLE INTERESTS**

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4.1 Where a Director is a Conflicted Director and the Notifiable Interest is a material personal interest (for the purposes of section 191 of the Corporations Act) the Board and the Conflicted Director must ensure that section 195 is complied with. This includes the Conflicted Director:

- (a) withdrawing from Board meetings for the duration of any discussion on the relevant matter;
- (b) refraining from taking part in any Board decision on the relevant matter; and
- (c) not receiving Board papers or other information which relate in any way to the relevant matter.

4.2 Notwithstanding paragraph 4.1 above, the Board may permit the Conflicted Director to participate in a Board meeting discussion on the relevant matter or vote in a Board decision on the relevant matter, if the Directors (other than the Conflicted Director) pass a resolution detailing:

- (a) the identity of the Conflicted Director, the nature and extent of the Notifiable Interest in the relevant matter and its relationship to the Company; and
- (b) the fact the Directors are satisfied that the Notifiable Interest should not disqualify the Conflicted Director from participating in a Board meeting discussion or decision on the relevant matter.

4.3 Unless the Board (other than the Conflicted Director) considers that the Notifiable Interest is of such nature or sensitivity that it is not appropriate to do so, the Company Secretary will:

- (a) maintain a reporting system by which the Conflicted Director is kept informed, in broad terms (and with sensitive information removed) of the progress or status of the relevant matter;
- (b) record particulars of any decision of the Board in respect of that matter; and
- (c) notify the Conflicted Director of the nature of the information withheld.

4.4 Where any withheld information becomes publicly available or, in the opinion of the Chairperson, the potential for any conflict of interest has passed, the Company Secretary may provide a briefing to the Conflicted Director as to the status of matter to which the Notifiable Interest relates and particulars of any decision of the Board in respect of that matter.

## **5. STANDING NOTICES**

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5.1 A Director may, at any time, choose to submit a standing notice of any Notifiable Interest to all other Directors of the Board which must provide details of the nature and extent of the conflict of interest (Standing Notice).

5.2 The Standing Notice may be provided orally at a Board meeting or to all of the other Directors individually in writing. If a Standing Notice is given to the other Directors

individually in writing, it must be tabled at the next Board meeting after it is given. Each Standing Notice takes effect as soon as it is given.

- 5.3 A Standing Notice ceases to have effect if the nature or extent of the interest materially increases above that disclosed in the relevant Standing Notice. It is therefore important that Directors keep their Standing Notices up to date if the circumstances relevant to the nature or extent of the Notifiable Interest changes.

## 6. SPECIFIC RESPONSIBILITIES

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- 6.1 The Company Secretary will be available to discuss with any Director the application of this Policy and provide guidance as to whether a Director should be making a disclosure in accordance with this Policy. It is the Chairperson's responsibility to ensure that Directors remain aware of, and in compliance with, their obligations and commitments under this Policy.
- 6.2 Where the Chairperson has a Notifiable Interest the Lead Independent Director must take on the responsibilities of the Chairperson under this Policy in respect of its application to the Chairperson and his or her Notifiable Interest. Where this occurs, all references to the Chairperson in other paragraphs of this Policy should be read as references to the Lead Independent Director.

## 7. PROCEDURAL MATTERS

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### Administration of this Policy

The Company Secretary is responsible for administering this Policy, including any discussions, disclosures, resolutions and the application of any protocols under this Policy, which may be recorded in the minutes of meetings of the Board or Board Committee (as appropriate).

The Company Secretary will also:

- (a) maintain records of, and keep the Board advised as to the status of each Director who has been identified as having a Notifiable Interest;
- (b) provide a copy of any Standing Notice to any Director upon his or her request;
- (c) ensure that the nature and extent of the interest disclosed in a Standing Notice is recorded in the minutes of the meeting at which the Standing Notice is given or tabled; and
- (d) as part of the Company's induction procedures for new Directors provide those Directors with a copy of this Policy and copies of all current Standing Notices.

Application of Policy to Board committee matters

The procedures in this Policy apply equally to any matters to be brought before any committee of the Board. If this applies, references to the Chairperson should be read as references to the Chairperson of the relevant Board committee and references to the Board should be read as references to the relevant Board committee.

#### Review of Policy

The Remuneration & Nomination Committee will, at least once every two years, review this Policy to determine its adequacy for current circumstances and may make recommendations to the Board in relation to revisions to this Policy or otherwise.

## 8. DEFINITIONS

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In this Policy:

**Associate means**, in relation to an Entity (**Subject Entity**):

- (a) a related body corporate of the Subject Entity;
- (b) an Entity that is controlled by another Entity that also controls the Subject Entity; and
- (c) a director or salaried executive of the Subject Entity or any of the Entities described in paragraphs
- (d) (a) or (b) above.

**Commercial Counterparty** means an Entity with which the Company has a commercial or other business relationship, and includes, without limitation, an offtake customer, marketing agent, supplier, financier, and a legal, financial, corporate or other professional adviser.

**Conflicted Director** means a Director:

- (a) who has provided notice of a Notifiable Interest; or
- (b) in respect of whom the Board resolves has a Notifiable Interest.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Entity** includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust, and a Government Agency.

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, including a stock or other securities exchange, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.

## 9. FURTHER INFORMATION

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If you have any questions or need further information on how to comply with this Policy, please contact the Company Secretary.