

If a decision is invalid due to a conflict of interest this can in principle be ratified, i.e. the decision can be maintained despite the original error. It is assumed that such ratification can be made by the body that made the original decision, in that the board or committee is summoned again and disqualified representatives withdraw from the new consideration. In this connection the fact that a representative has participated in considering a case before does not lead to a conflict of interest. In order to avoid doubt as to whether a representative in a "new" board is impartial, it may be appropriate in some cases that any ratification takes place through a decision by a superior body that confirms the subordinate body's original decision, particularly in cases of substantial significance.

An invalid decision that contains prohibitions or orders must be regarded as a nullity. The decision is then deemed to be non-existing and cannot be implemented vis-à-vis those it concerns. If there is invalidity concerning a decision which entails that Offshore Norge gives a promise to a third party, for example signs a contract for the delivery of goods or services, the invalidity cannot be invoked vis-à-vis a bona fide third party. Where an approval is granted, a deficiency in powers due to a conflict of interest regarding the decision cannot be invoked vis-à-vis a bona fide third party to which the approval is granted. If the representative has a central position in the company Offshore Norge is contracting with, it may nevertheless be deemed that the company in some cases must be identified with the representative, something which will deprive the company of its good faith in relation to the exceeding of powers in Offshore Norge.

7. Practical guidelines for assessing conflicts of interest regarding Norwegian Oil and Gas representatives

Part of the assignment has been to frame practical guidelines for representatives on how they should act if a conflict of interest is possible or probable. As mentioned above, Offshore Norge has no provisions on conflict of interest in its by-laws. As rules governing conflict of interest may be crucial to the validity of decisions made by Offshore Norge' bodies, it may be expedient to formally base any guidelines on Offshore Norge' regulatory requirements. An expedient alternative could be that Offshore Norge' supreme body adopts a resolution on guidelines for assessing conflicts of interest which is to apply to boards and committees within Offshore Norge. To clarify the normative basis of the conflict of interest rules it could be expedient to include provisions on conflict of interest in Offshore Norge' by-laws. By-law provisions on conflicts of interest can indicate a more general or fundamental starting point, and leave it to the Board to stipulate more detailed guidelines for the assessment. Appendix 1 contains guidelines based in non-statutory principles regarding conflicts of interest we assume apply within Offshore Norge.

The rules of law regarding conflicts of interest as described above state the legal limits for powers of representatives in decision-making bodies in Offshore Norge. It is not given that the limits for invalidity should govern the framing of rules on conflicts of interest regarding representatives. Ethical assessments and consideration for confidence in the

decisions made in an organization could dictate that representatives withdraw from the consideration of a case when there is a conflict of interest, even though the conflict of interest in a legal assessment will not lead to there being deficient powers in the decision made. If Offshore Norge finds it expedient, Offshore Norge can adopt guidelines for when representatives shall withdraw from the consideration of cases due to conflicts that are more stringent than those that follow from the non-statutory principles regarding conflicts of interest. Whether ethical assessments dictate that guidelines for conflicts of interest within Offshore Norge should be more stringent than what follows from non-statutory, association law principles is a policy assessment that Offshore Norge must make.

APPENDIX 1

Practical guidelines for assessment of conflicts of interest regarding Norwegian Oil and Gas representatives

- ◆ Representatives in Offshore Norge are to be deemed to having a conflict of interest in the consideration of cases they or any parties close to them have a special interest in, if the special interest is suited to impair confidence in the representative's impartiality.
- ◆ A special interest that can lead to a conflict of interest may be the result of (list not exhaustive):
 - ◇ The representative having a personal or financial interest in the case.
 - ◇ The representative's employer within the representative's areas of responsibility and work having a special interest in a case.
 - ◇ Board appointments or offices held in companies or organizations that have a special interest in the outcome of a particular case.
- ◆ It is incumbent on the individual to assess whether there are circumstances that are suited to impair confidence in the representative's impartiality. If there are such circumstances the representative shall inform the body in which the representative is a member of the circumstances.
- ◆ The relevant body shall consider the question of conflict of interest immediately after it has been informed that there may be grounds for a conflict of interest regarding one or more representatives, or becomes aware of this due to its own findings. The representative(s) involved shall not participate in the consideration of their own disqualification. The representatives shall nevertheless have the opportunity to give an account of significant circumstances to the extent this is necessary in order for the body to have sufficient information about the case so that it can make a decision regarding the question of a conflict of interest.
- ◆ If the body finds that one or more representatives have a conflict of interest, the body shall adopt a resolution to the effect that the representative(s) must withdraw from the consideration of the cases involved. Representatives that withdraw due to a conflict of interest shall not participate in any part of the consideration.
- ◆ The representative can choose to withdraw due to a conflict of interest. In such case the body shall take this under advisement and ensure that consideration of and voting in the relevant case is implemented without the disqualified representative being present.
- ◆ If one or more representatives withdraw due to a conflict of interest, it is incumbent on the body to ensure that there is a quorum.
- ◆ The consequence of a conflict of interest is that a decision will be invalid.