

**Board Manual**  
**Community Economic Development Plan**  
**Articles of Incorporation and Bylaws**  
**FarmWorks Investment Co-operative Limited**

**November 2015**

**Vision**

*Healthy Farms, Healthy People*

**Mission**

*To promote and provide strategic and responsible community investment in food production and distribution in order to increase access to a sustainable local food supply for all Nova Scotians*

**Objectives of the Community Economic Development Plan**

1. In accordance with its Articles of Incorporation and Bylaws, FarmWorks Investment Co-operative Limited, a for-profit Co-operative with a Board of Directors elected by the shareholders who are residents of Nova Scotia, is:
  - a. carrying on an active business that evaluates and makes eligible investments in Nova Scotian businesses that will increase access to a sustainable local food supply for Nova Scotians;
  - b. providing information and educating investors who are interested in supporting food producing enterprises in Nova Scotia with regard to the role of capital in business, the value of equity investments to the defined community and the rights and obligations of corporations and shareholders,
  - c. investing the capital raised, to which a tax credit pursuant to the Act has been issued, in eligible food producing businesses in Nova Scotia,
  - d. exercising ownership rights with respect to the eligible investments made by the corporation,
  - e. providing the administrative support necessary to carry on the business of the corporation, including preparation of annual reports and the holding of meetings of shareholders and the Board of Directors,
2. FarmWorks Investment Co-operative is carrying on this business for the people of Nova Scotia in order to increase access to a sustainable local food supply for Nova Scotians,
3. FarmWorks Investment Co-operative Limited has made provision for annual general meetings of the shareholders,
4. FarmWorks Investment Co-operative Limited is providing mentoring support and help to facilitate farm and food-related innovation and diversification in partnership with government and non-government organizations.
5. FarmWorks Investment Co-operative Limited is monitoring and evaluating other investment tools and investment opportunities that may be used to achieve FarmWorks goals.

**Community Economic Development Investors**

6. Develop and market a Community Economic Development Investment Fund that raises a minimum of \$50,000 up to a maximum of \$1,000,000 of equity capital in each Offer, and
  - a. the equity shares are of only one class without series and have never previously been issued,
  - b. will be issued from the treasury of the corporation on being fully paid for in cash
  - c. will, immediately following their issue, be registered in the name of each shareholder that purchases them or in the name of a trustee, if the shares are held by the trustee for the benefit of a shareholder,
  - d. do not have any rights or restrictions that may be prohibited by these regulations;
7. If a share certificate is not required to be issued to each new shareholder, an investment confirmation will be issued to each new shareholder within thirty days of share registration, setting out at least the following:
  - e. the number of shares acquired, the price paid per share, the total amount paid, and the procedure for obtaining the tax credit receipt pursuant to the Act.
8. FarmWorks Investment Co-operative grants loans at 6% for five years unless otherwise indicated.

- 9. FarmWorks will invest the proceeds of each Offer in eligible businesses that will strive to increase their sustainable local food production and profitability by 10% per year by the third year following investment;
- 10. At the present time the Board of Directors has not decided on specific entities for investment in this offer;
- 11. Mentoring will be provided to investees;
- 12. Investees will be required to submit financial reports to the Board of Directors.

### Community Economic Development Outcomes

Success for the FarmWorks CED is a measurable increase in food production, positive outcomes for investees and a return on investment for shareholders. The overall success of FarmWorks initiatives: creating employment; contributing to an improving economic outlook for farmers and food producers; helping to restore rural vitality; provide wider access to healthy food; and helping to remove the risks associated with lack of food self-sufficiency.

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## Responsibilities

### Directors (<http://www.nasco-opcouncil.ca/pdfs/publication/BoardManualforCo-operatives.pdf>)

<b>Title</b>	Director
<b>Accountable to</b>	Members of the co-operative
<b>Core Function</b>	FarmWorks may not employ staff. The board of directors is a working board charged with operating the cooperative as well as setting and approving policy. All directors are expected to participate with the other directors in operating the co-operative, guided by the Act, articles of incorporation, by-laws, and member policies, so that the co-operative effectively moves toward achieving the objectives of the organization. All directors will be expected to undertake certain tasks (a list is included as an appendix to this manual) to ensure functioning of the cooperative.

### Relationships:

Members. Leadership role, providing an example and interpreting views and needs of members

Directors. Acts on a team with the other directors, and has authority as a director only in board meetings and as delegated by the board, for example, on committees.

Staff. No staff or managers are currently employed by the cooperative Time Commitment. Each director will be expected to contribute a minimum of TBA hours per week, helping to run the cooperative. Of special importance is the periodic evaluation of loan applications. Directors will be expected to either lead review teams or participate as member of a review team at least 3 times per year. This commitment may increase depending on the number of applications received.

**Duties & Responsibilities** To participate jointly with the other members of the board of directors in carrying out the following responsibilities of the board: 7/04/2017

- o The establishment of overall mission, objectives, and policies for the direction of the co-operative
- o Establish the organization of the board, including appointment of committees, and clearly define the responsibilities and the authority assigned
- o Participate in one or more committees/action teams to undertake the tasks (e.g. record keeping, website maintenance, publicity, public presentations, financial affairs) that are essential to the operation of the cooperative
- o Attends site visits with clients, government and non-government representatives, and presentations to become informed of challenges facing the local agri-food business community in Nova Scotia to be better equipped to provide advice and mentoring to FarmWorks clients
- o Approve strategic plan, programs, capital, and operating budgets

- o Analyse and appraise progress in achieving objectives and goals
- o Authorize changes in the assets of the organization
- o Recommend by-law amendments
- o Deal with Offerings of new shares
- o Recommend distribution or any surplus enjoyed by the cooperative at year end o Authorize repayment of member equities
- o Establish and monitor controls and regulations for the protection of members and creditors
- o Provide for effective communications, and member and public relations for the organization

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### Chairperson

**Title** Chair

**Accountable to** The board of directors

**Core Function** To serve as the senior officer of the co-operative, coordinating activities and giving leadership to the board of directors, acting as a liaison with the general manager, the board of directors, and engaging in communications with the members, local organizations, and government.

### Responsibilities

- o Manage the processes of the board
- o To act as Chair of meetings of the board
- o To be, ex officio, a member of all board committees – receiving reports and minutes, but does not necessarily have to attend
- o To have the agenda prepared for board meetings and to assure that adequate information is available for board study. Also, gives leadership in planning the year’s agenda of special items
- o To be signing officer for the co-operative along with others appointed by the board
- o To interpret and clarify policies and decisions of the board
- o To maintain effective liaison with the general manager and the board of directors
- o To report to the members on behalf of the board of directors
- o To represent the co-operative and explain plans, policies and programs, when this has not been otherwise delegated by the board
- o To play a leadership role with other co-operatives as well as in the community on behalf of the co-operative
- o To give leadership to the board, including encouragement for board training
- o To effectively orient new board members
- o To appoint committees of the board subject to approval of the board

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### Secretary

**Title** Secretary

**Accountable to** The board of directors

**Core Function** To maintain the records of the board and the official documents of the co-operative and communicate on behalf of the board.

### Responsibilities

- o To keep adequate and impartial minutes of board, executive, and membership meeting
- o To provide proper notice and communication of meetings of the co-operative
- o To be a signing officer for the co-operative as required by law and by a decision of the board

- To provide for the official correspondence of the co-operative
- To see that the official records, papers, and documents of the co-operative are maintained
- To provide for the safekeeping of the seal of the co-operative and other legal documents
- To ensure that the co-operative is operating within its powers and by-laws, and to recommend changes to the board if required
- To see that the historical records of the co-operative are maintained
- To maintain liaison and communication with the secretary of Central Co-operative Limited
- To prepare a board manual as approved by the board, provide a copy for each directors, and keep it up to date
- To maintain and update personal record forms for each director

**Note** Where a recording secretary has been appointed, a job description setting out the responsibilities should be provided. Assistance should be provided as required.

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## Treasurer

**Title** Treasurer

**Accountable to** The board of directors and the shareholders

**Core Function** Financial management and oversight of the financial affairs of the organization including such tasks as selecting a bank, reconciling bank statements, and managing cash flow; may be responsible for investing funds consistent with applicable laws; control organization’s funds and manage debts owed; create and maintain systems for ensuring the organization’s ongoing solvency and oversee the development of the organization’s financial policies including check signing authority and expense reimbursement.

- Attend all board meetings
- Maintain knowledge of the organization and personal commitment to its goals and objectives
- Understand financial accounting for the organization
- Arrange bookkeeping and accounting for the organization
- Ensure timely communication with Securities Commission, Department of Finance, and Shareholders
- Manage and report to the board all financial activity related to the board's financial responsibilities
- Receive and reconcile the bank statements
- Ensure that appropriate financial reports are made available to the board on a timely basis
- Present the annual budget to the board for approval
- Review the annual audit and answer board members' questions about the audit

All board members share responsibility for the financial health of the organization. The Executive forms a core board leadership group alongside the Treasurer. The Secretary should be diligent in taking complete and concise minutes that reflect filing of the treasurer's report and all board decisions.

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## Member of a Co-operative

**Title** Co-operative Member

**Core Function** To participate in the ownership, control, and patronage of the co-operative to the end that it effectively fulfills its purposes and meets the needs of the members

### Rights of Members

- Co-operative members have the right to receive:
- Audited financial statement yearly
  - By-laws of the co-operative
  - Equity statement yearly
  - Notice of members meetings
  - Policies relating to purchase of, transfer, and withdrawal of shares

- Proportional part of the surplus (profits) in relationship to use
- Co-operative members have the right to view at the co-operative's office: Minutes of membership meetings and list of directors and officers

**Responsibilities**

Co-operative members have the responsibility to:

- Nominate, elect, and serve as responsible, prudent board members
- Make major decisions affecting the co-operative
- Approve changes to legal incorporation documents
- Understand the mission, policies, and legal documents
- Participate in promoting, explaining, defending and correcting the co-operative
- Serve on committees of the co-operative
- The co-operative is required to report annually to the Inspector of Co-operatives and the Securities Commission
- Patronize the co-operative
- Help finance the co-operative

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**Boards & By-Laws**

**BY-LAWS OF THE CO-OPERATIVE**

**Responsibility of the Board**

It is the responsibility of the board to understand the by-laws, to be guided by them, to communicate their content to members, and to recommend amendments as required.

**Objectives for Updating By-Laws**

- To maintain, in an updated form, the official by-laws of the co-operative
- To have copies of the by-laws readily available to directors and members
- To have a summary containing the aspects of greatest interest to members available to members and, in particular, new members

**Establishment of By-Laws**

By-laws are established by the members, registered with the Inspector of Co-operatives, and are one of the guides for the board in carrying out its role.

**Effect of By-Laws**

By-laws are binding on all members of the co-operative, the same as if each had signed them; and each member, when joining the co-operative, agrees to be bound and to abide by the by-laws of the co-operative.

**Amendments**

By-laws are amended by the members, usually on recommendations of the board of directors. To be in force or effect, the amendment must be filed and approved by the Inspector of Co-operatives.

**Members Responsibilities Regarding By-Laws**

- To understand the by-laws
- To abide by the by-laws
- To amend the by-laws

**Directors**

- To understand the by-laws
- To be guided by the by-laws
- To communicate the by-laws to the members
- To recommend changes to the board as required

**Secretary**

- To see that the official copy of the by-laws is safely maintained
- To ensure that the co-operative is operating in accordance with the by-laws

- o To recommend changes to the board as required

**Procedures for Updating By-Laws**

- 1) Appoint a committee to review the present by-laws and identify sections that need updating
- 2) Consult with the Inspector of Co-operatives for proposed working and procedures to register
- 3) Notify the members of the intent to amend by-laws through a membership meeting and a special resolution
- 4) Have the proposed by-laws typed, duplicated, and distributed to each director and to the manager
- 5) After approval by members, have the new by-laws registered with the Inspector of Co-operatives
- 6) When the approved, registered by-laws have been returned, include in them in the new member’s kit and make them available to all members
- 7) Assign responsibility for keeping the by-laws up to date and understood
- 8) Periodically review the by-laws with a view to updating them and proposing amendments as required

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**Confidentiality Agreement Board and Investees**

**Sample Non-Disclosure Agreement**

I, \_\_\_\_\_, acting as a Board Member or Advisor, on behalf of FarmWorks Investment Co-operative Limited, acknowledge that the information received or generated, directly or indirectly, while acting for FarmWorks is confidential and that the nature of the business of FarmWorks and any investor in FarmWorks, or applicant for funding by FarmWorks is such that the following conditions are reasonable, and therefore:

I warrant, covenant and agree as follows:

I, or any others engaged by FarmWorks, agree not to disclose, directly or indirectly, any information with respect to any business conducted by FarmWorks or its Investors or Applicants. Without restricting the generality of the foregoing, it is agreed that we will not disclose:

- Financial information, business plans, strategies for development or growth, or any other proprietary information not known generally to the public or in the public domain relating in any way to the business of the Association, or any other information regarding the management or method of operation, and
- That I will not copy or reproduce, in any form, information provided to us by FarmWorks or its Investors or Applicants for the purpose of distribution or use outside the scope of due diligence, and that all documentation provided to us will be returned to FarmWorks

unless otherwise approved, in writing, by the Chair of FarmWorks.

This obligation of confidence shall continue for a period of five (5) years.

I acknowledge that the aforesaid restrictions are necessary and fundamental to the business of FarmWorks, and are reasonable given the nature of the business carried on by the Association. I agree that this agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia. I agree that each provision of this agreement is separate and distinct, and is severable from all other separate and distinct provisions.

If any of the activities, periods of time, or other matters contained in this agreement are considered by a court of competent jurisdiction as being unreasonable, the court shall have the authority to limit such matters as the court deems proper in the circumstances and if any provision is void or unenforceable in all or in part, it shall not affect the enforceability of the balance of this agreement. FarmWorks Investment Co-operative Limited shall be entitled and has the right to obtain an injunction to ensure compliance with this agreement.

I enter into this agreement totally voluntarily, with full knowledge of its meaning, and without duress.

Dated at \_\_\_\_\_, in the Province of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Name \_\_\_\_\_

Signature \_\_\_\_\_

## Legal Responsibilities of Directors

<http://www.nsco-opcouncil.ca/pdfs/publication/Tip03-LegalResponsibilitiesofDirectors.pdf>

### INTRODUCTION

The law on director's duties is complex, and this should be seen as merely introducing the subject. Expert advice should be sought on particular issues as they may arise.

Director's duties and responsibilities are varied. However, the law has traditionally treated them as falling within two categories; duties of care and skill, and fiduciary duties. A fiduciary is a person who, because of the position they occupy, have the responsibility to act primarily for another's benefit rather than for themselves. Statutes at the provincial and federal levels have dealt with some aspects of director's duties, but much of the material on this subject is part of the common law (i.e. has been generated through judgments in cases before the courts).

Simply stated, the main duty of the board of directors is to manage, or supervise the management of, the affairs of the co-operative. This is provided for in most statutes. In provinces where legislation omits any such reference, the common law provides for this. The terminology used in legislation from jurisdiction to jurisdiction is not consistent. However, differences in terminology probably have little impact on the nature of director's obligations.

The fact that many directors of co-operatives are not remunerated for their efforts does not affect their legal liability. The law imposes legal duties equally upon voluntary directors and those who receive some form of compensation.

There are many individual functions and responsibilities within this general duty. Some are specified in statutes, while others are not. This publication will address both statutory and non-statutory duties. In addition, some director's duties can be found in the constitutions of co-operatives, while others are implied by the operation of the common law.

### The Duty to Act with Care & Skill

The law does not require directors to be experts. It only demands the standard of care and skill which could be expected of a reasonable person. This is not a strict standard. While there is some difference of opinion on the level of care and skill required of directors, this statutory standard is probably lower than that which exists in provinces that have not legislated this particular point. However, the rules regarding diligence impose a greater burden on directors than does the common law. This non-statutory or common law position was laid down for corporations in 1925, and is generally viewed as representing the position for co-operatives.

Under the common law, directors of companies and co-operatives are required to exercise the degree of care and skill that may reasonably be expected from persons of their knowledge and experience. Consequently, much can be expected of an experienced and skilled business person, but little is expected of someone unversed in the ways of business. Bearing in mind the varying degrees of skill possessed by directors of co-operatives, the common law standard would appear appropriate.

Directors do not have to give continuous attention to the affairs of their co-operative, nor need they attend all board meetings (although they should attend whenever possible). As long as there are no grounds for suspicion, duties can be left to those hired to perform them. In addition, directors are not liable for mere errors of judgment.

Although the standard of care and skill required of directors of co-operatives is not very high, there is a risk to directors who do not pay attention to the affairs of their co-operative. Nevertheless, even if it is established that a director breached their duty of care and skill, it may be very difficult to prove that their negligence actually caused the loss experienced by the co-operative. It is difficult to show that if the director had paid appropriate attention the loss would not have occurred.

Directors must exercise care in selecting the officers of the co-operative. Once chosen, so long as suspicion would not be aroused on the part of a reasonably diligent person, the officers can be left to do their jobs without constant supervision. In particular, directors can rely on documents prepared by professionals, such as accountants and lawyers hired by the co-operative. As the standard of care required of directors is rather low, it is very important for co-operatives to pay particular attention to electing high quality directors.

### Fiduciary Duties of Directors

Directors deal with other people's money and property and, as a result, have fiduciary duties to their co-operatives. This means that they will be treated in a similar way as trustees and will be obligated to act with utmost good faith and loyalty to their co-

operative. Some provinces have statutory provisions dealing specifically with director's fiduciary duties. In the absence of such provisions the common law applies. Both will be discussed here. Traditionally, these obligations fall into four categories:

Directors must act honestly in the best interests of their co-operative. A co-operative is a legal entity, separate from its members. However, the long-term best interests of the co-operative's members generally constitute the best interests of the co-operative. There must be reasonable grounds upon which the directors feel their actions are in the best interests of the co-operative. For example, measures can be taken to improve the position of the employees by granting them a bonus. This can be presented as good for the co-operative by virtue of bringing about better labour-management relations and better productivity. A recent case in Canada stated that, so long as the interests of shareholders of corporation are not totally disregarded, other interests can be legitimately pursued by the directors. This would presumably hold for co-operatives also. What is in the best interests of a co-operative? A corporation's best interests are the long-term best interests of its shareholders as seen in terms of profit maximization. In a co-operative, the members may be interested in issues other than economic ones, such as the impact of the co-operative on their community and an opportunity to have a say in the operation of the association. For both corporations and co-operatives, it is necessary for directors to balance the long and short-term interests of their organizations.

Directors must only exercise their power for the purposes it was granted. They cannot, for example, issue shares in an attempt to maintain their positions as directors.

Directors must not restrict their discretion to act in the best interests of their co-operative. In other words, they are not permitted to agree with someone outside the co-operative to vote in a particular way at a meeting.

A director must not place themselves in a position which gives rise to a conflict between their interests and those of the co-operative. In practice, this situation can be dealt with by looking at the following common circumstances:

**MATERIAL CONTACTS.** A contract made between a director, or some person or organization in which the director has a material interest, and their co-operative is voidable at the instance of the co-operative. This means that the co-operative can refuse to be bound by the contract. In addition, the director can be required to forfeit any profits they make from such contracts to the co-operative, even if the contract in question benefits the co-operative. The rationale is that the director cannot look after the co-operative's interests and their own interests when they are contracting with each other, or where the director has some other personal interest in the contract.

Such contracts are prohibited neither by common law nor by statute. Rather, the law attempts to control these contracts by providing mechanisms for directors to obtain the approval of the co-operative for such activity. As a general rule, directors should make a full and frank statement of any contracts that put them in conflict with their co-operative as soon as the conflict arises.

A director may not take part in discussions or vote on contracts in which they have an interest, unless the contracts involve obligations undertaken by the director for the benefit of the co-operative, remuneration for the director or a contract of indemnity or insurance to protect the director from responsibility for actions carried on in the course of their duties as a director.

The disclosure requirement can be satisfied by a continuing blanket disclosure of the director's contracts to the board of directors. The common law dictates that the only course open to a director who is interested in a contract is to make full disclosure of their interest to the members, and to have the contract ratified by the general meeting.

Most statutes include the disclosure requirement contracts of directors entered into in the capacity as members. For instance, the Co-operative Associations Act, which is most precise on this point, excludes marketing contracts, service contracts, or contracts to purchase goods from the association that are 'similar to contracts entered into by the association with members who are not directors thereof'.

The result of making the disclosure is that the contract, provided it is fair and reasonable for the co-operative, will not be voidable as a result only of the director's interest in it. Also, the director will be able to retain profits they may experience from the contract. On the other hand, where these disclosure requirements are not satisfied, the contract can be set aside at the instance of the co-operative or one of the members. This is the common law position and would apply in every province where the appropriate statutory or common law disclosure rules had not been complied with.

**Misuse of Confidential Information.** A director must not use any property, information, or opportunity belonging to the co-operative for their own profit. A director may find themselves in possession of information available only to directors. If the director experiences a profit as a result of using this information, they can be required to forfeit it to the co-operative. Similarly, if



a co-operative is considering a particular business venture on their own behalf, profits made as a result can be required to be forfeited to the co-operative. It is a particular example of a conflict of interest between the director and their co-operative.

'Insider trading' in co-operatives has received more attention in recent statutes. It involves the use of information that comes to the director's attention as a result of being a director. The problem is more acute in corporations, and the precautions taken in regard to co-operatives are less extensive. The situation may arise, however, where a director holding a large number of shares in a co-operative may, as the result of information available to them as a director, arrange to make a profit which they should not be entitled to retain.

## **LEGISLATED DUTIES & POSSIBLE PROTECTIONS FROM LIABILITY**

### **Specific Statutory Duties**

The various co-operative statutes place specific responsibilities on directors. In addition, they set out certain duties to be performed by the co-operatives themselves. As co-operatives can only act through their functionaries, the obligation to perform these duties falls upon the directors in fulfillment of their duty to supervise the management of the co-operative. Relevant statutes should be perused to ascertain these duties in detail. However, some general comments can be made to indicate the sort of duties involved.

Naturally, directors and co-operatives must comply with the statute under which they are incorporated and with regulations passed under it, as well as with the articles and by-laws of the co-operative. They must hold appropriate meetings and present financial statements and auditor's reports to the annual meetings of members. They must file annual returns and respond to requests from the Registrar.

### **Protection for Directors**

To what extent can directors be protected or relived from their responsibility and receive payment for expenditures and loss incurred as the result of legal action being taken against them in their capacity as directors? Again, the legislation is not uniform. Most statutes make no reference to this point.

Consequently, the common law position applies and permits co-operatives to relieve their directors from responsibility for breaches of duty and indemnify them against liability and expenditures. Generally, the statutes that contain provisions dealing with these matters limit such relief to circumstances in which the director acts in good faith.

## **CONCLUSION**

Co-operatives need to pay particular attention to electing directors and to ensuring that those elected are equipped to deal with the challenges of running the co-operative's affairs. The level of care and skill required of directors by the law is not high; however, they do have to be diligent in their actions or run the risk of being held accountable for any losses their lack of care gives rise to. Director's fiduciary duties are strictly enforced, and directors may be relieved from their duties by the co-operative.

The statutes of each province, and of Canada, deal differently with director's duties, and directors and their co-operative should consult the Acts for the specific rules applicable in their region.

Legal advisors should be consulted when the co-operative's legal position is in question. However, boards of directors are advised to pay attention to careful documentation of board decisions, written manager job descriptions, and contract or employment, as well as systematic, well documented treatment of any issues having potential legal consequences.

For further information on this and other related topics, as well as many co-operative development subjects such as governance, finance and marketing, strategic planning, management, etc, contact the Nova Scotia Co-operative Council or see [www.nscouncil.ca](http://www.nscouncil.ca).

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## **Ethical Guidelines for Board Members of Not-for-Profit Organizations**

***(FarmWorks is a for-profit Co-operative but values are closely aligned with not-for-profit)***

### **Introduction**

Not-for-profit societies or associations are generally created in order to provide programs and services which address specific needs or interests of those who create the organizations. These organizations are governed by a board of directors, which is responsible for directing, influencing, and monitoring the organization's business. The boards generally carry out their governance roles by developing and monitoring policies, and work is generally organized through committees.

Board members of not-for-profit organizations are volunteers who have an interest in the well-being of the organization. With their board membership, however, comes responsibility and accountability. An overriding area of concern for all not-for-profit organizations is its ethical governance - not only must governance be ethical in all areas, but it must also be perceived to be ethical. The ethical operations of the entire organization will flow from the standards set by both policy and leadership actuality, and the ethical conduct of each board member will determine the perception and to a degree the reality of the ethical conduct of the board as a whole, and through to the not-for-profit organization as a whole.

While board members are both liable and responsible for their conduct and decisions in their board member role, the not-for-profit organization often does not articulate standards which define potential areas of unethical conduct by board members. Practices which are acceptable in a business setting may not be considered ethical in the not-for-profit organization's domain; however, if board members are not made aware of these areas of concern, they may breach ethical boundaries unknowingly to the detriment of both the organization, its membership and themselves. It is therefore incumbent on not-for-profit organizations to articulate ethical guidelines to board members at the outset of their membership to protect the sanctity of both the organization and the member.

### **Reasons for Serving on a Not-For-Profit Board**

Individuals volunteer to serve on boards of not-for-profit organizations for many different reasons. Most volunteers offer their services because they share the *raison d'être* for the existence of the organization, and strongly believe in its work and purpose. People also serve on boards from *enlightened self-interest*, in that they believe in the organization, but they also want to gain personal benefits from their volunteer efforts. While it is generally due to board members' seeking personal benefits from their volunteer efforts that most areas of conflict of interest arise, ethical issues can also arise through actions or lack of actions unbeknownst to the board members.

### **Areas of Potential Ethical Problems**

Board members both expect and are expected to carry out their board duties with the proper use of their authority, and in a professional and ethical manner. Ethical problems evolve in situations where expected standards or norms are not met, whether they have been clearly articulated by the not-for-profit organization or the organization has been silent on the standards. Expected performance standards include the following:

- Being loyal to the organization and its members
- Avoiding conflict of interest, including direct and indirect gains which could accrue to the member as a result of actions or decisions made in the capacity of board authority. Examples of potential conflict of interest include:
  - A board member makes a decision motivated by considerations other than the "best interests of the not-for-profit organization"
  - A board member or close family member personally contracting with the organization

- A board member learns of an opportunity for profit which may be valuable to him/her personally or to another organization of which he/she is a member
- A board member assists a third party in their dealings with the organization, where such assistance could result in favorable or preferential treatment being granted the third party, by the not-for-profit organization
- A board member receives gifts or loans from the organization
- Dealing with the public, clients, and board peers in an ethical, fair, and straight forward manner
- Not exercising individual authority over the organization
- Speaking positively of the not-for-profit organization to the public
- Fostering friendly and positive working relationships between members and clients
- Maintaining confidentiality of board business

Standards and the practicing of these standards are set by the leadership, and the organizational culture follows from these standards and subsequent practice by board members. A lack of an ethical base resulting from not creating and following ethical standards has the potential to lead to a lack of success in the organization. As unethical behavior by an individual board member reflects on the board as a whole, and vicariously to the organization as a whole, it behooves organizations to provide clear standards for board members.

### **Board Obligations and Responsibilities**

The board is ultimately responsible to determine the purpose of the organization, through the establishment and implementation of the organization's vision and mission, and the review and modification of these guiding principles as required. It is also responsible for the continuity of the organization, which it provides by directly managing and implementing the organization's affairs, or through the effective recruitment of management and staff personnel. The board sets the organization's rate of progress in reaching its mission and vision, and also is responsible for establishing the identity of the organization by securing its community's support and appreciation for the organization's *raison d'être* and long term direction.

It is important that the board ensure that its members are aware of its obligations and responsibilities, and that this information be clearly articulated and disseminated. Each board member is ethically responsible for the proper functioning of the board.

### **Guidelines for Board Members**

Organizations should establish a code of ethics for directors. The structure and contents of such a code, while important, are secondary to the commitment to developing a code, and the awareness established through the development process. Each board should determine areas of specific concerns given their own special circumstances and areas of risk. These circumstances and risk areas may change and evolve with the organization's growth and evolution, and the code of ethics should be revised to maintain currency with organizational shifts. While individual organizations' specific areas of concern may not incorporate some of the following identified potential components of a code of ethics for board members, the components are identified along with a relatively exhaustive listing of potential areas of conflict.

## **Code of Ethics for FarmWorks Investment Co-operative Limited Board of Directors**

### **Statement of Commitment**

As a Director, in establishing policy for and on behalf of the Shareholders of *FarmWorks' Investment Co-operative Limited*, I am a custodian in trust of the assets of *FarmWorks*. The Shareholders recognize the need for competent and committed elected board members to serve their organization and have put their trust in my sincerity and abilities. In return, the members deserve my utmost effort, dedication, and support.

Therefore, as a Director of *FarmWorks Investment Co-operative Limited*, I acknowledge and commit that I will observe a high standard of ethics and conduct as I devote my best efforts, skills and resources to the interests of *FarmWorks*. I will perform my duties as Director in such a manner that Shareholders' and Clients' confidence and trust in the integrity, objectivity and impartiality of *FarmWorks* is conserved and enhanced. To do otherwise would be a breach of the trust which Shareholders have bestowed upon me.

### **Ethical Guidelines**

#### **General**

1. I will always hold the betterment of *FarmWorks Investment Co-operative Limited* as my priority, including during all participation in discussions and voting matters.
2. I recognize that I am obligated to act in a manner which will bear the closest public scrutiny.
3. It is my responsibility to contribute to the board of directors any suggestions of ways to improve the organization's policies, standards, practices or ethics.
4. I will not abuse my position as a board member by suggesting that I am entitled to or expect any special treatment beyond regular members of the organization.
5. I will declare any conflict of interest, be it real, potential, or apparent, which is not immediately obvious with regard to any matter being discussed in my presence during a meeting.
6. If the board decides at any time during a meeting that I have a conflict, I will accept their request that I refrain from participating in the discussion and I will leave the meeting at the board's request. I understand that the board's decision will be recorded in the minutes, either with or without the reasons for the decision being also recorded
7. I understand that the following activities are considered by the organization to be conflicts of interest, and that conflicts of interest are not limited to the following situations:
  - where a director makes a decision or does an act motivated by other or additional considerations than "the best interests of the organization"
  - where a director personally contracts with the organization or where he/she is a director of other organizations which are contracting with this organization
  - where a director learns of an opportunity for profit which may be valuable to him/her personally or to another organization of which he/she is a member, or to other persons known to the director
  - where a director, in any circumstance as related to the organization, puts his/her personal interests ahead of the best interests of the organization

#### **Information**

8. I will not knowingly take advantage of or benefit from information that is obtained in the course of my official duties and responsibilities as a board member, and that is not generally available to membership
9. I will be alert to information which the organization can use to develop improved policies and strategies
10. I will protect the organizations information closely and will not release or share confidential information without the permission, preferably in writing, of the person who provided it
11. I will maintain confidentiality of all information which the board deems ought to be kept confidential

#### **Resources**

12. I will be mindful of resources which are in my trust on behalf of the organization, and will help establish policies which ensure the maximization of secure and protected resources

13. If any reimbursement for legitimate expenses incurred by myself for the sake of the organization is authorized I will keep all such expenses reasonable and justifiable and will discuss expenses which may be in question with *FarmWorks* Board

**Gifts and Hospitality**

14. Should business associates or others offer me gifts, favors, or benefits on a personal basis because of the business *FarmWorks* does with them, I will recognize that such offers may be an effort to secure advantage from me, and I will reject such offers on the basis that it is against the organization's policy to accept gifts from business contacts. The most I will accept will be normal promotional handouts of a nominal value.
15. I will not routinely accept the hospitality of others. For example, when meals are taken with business colleagues, I will pay for as many meals as do my colleagues.

**Representing the Organization**

16. As part of my duties as a board member, I represent *FarmWorks* informally and formally to other associations, societies, government officials, and business representatives. I recognize that it is important that I represent *FarmWorks* in such a way as to leave others with a positive impression of the organization. In my duties I will preserve and enhance the good reputation of *FarmWorks* and will avoid behavior which might damage its image.

**Interpretation**

17. The Executive of *FarmWorks* shall ensure that the practice of this policy will be fair, just, and equitable in all situations of interpretation and application.

**Enforcement**

18. The Executive of *FarmWorks* is ultimately responsible for interpretation, application and enforcement of the board members' code of ethics policy.

All complaints concerning a possible code of ethics violation shall be made in writing to the Executive with a copy provided to the complainant. The Executive shall make an initial determination of the issue and shall attempt initial resolution of the problem with the complainer and the complainant.

If this initial attempt at resolution is not successful, the Executive shall appoint a tribunal composed of three board members to investigate the complaint. The tribunal is required to investigate as required and submit a written report to the Executive within 30 days. The Executive will render a decision within ten days of receiving the tribunal's report.

The Executive's decision may be appealed in writing to the board of directors for consideration at the organization's next regular scheduled meeting for a final decision. The final decision shall be delivered in writing to the complainer and complainant.

19. Penalties imposed for breach of the code of ethics may include, but are not limited to, the following:

- Excluding the director from portions of all future meetings and discussions which relate to the stated conflict of interest, and/or
- censure of the director, in private, in public, or both, and/or
- removal of the director from office by a resolution passed by a vote of two-thirds of the members voting at an annual or special general meeting of the organization's members, provided that notice of such a proposed resolution is given with the notice calling the meeting.

I have read and accept *FarmWorks Investment Co-operative Limited's* Code of Ethics for Board Members

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Director or Nominee

## References

[http://www.axi.ca/tca/mar2004/guestarticle\\_4.shtml](http://www.axi.ca/tca/mar2004/guestarticle_4.shtml)

Stanton, Barbara H., Trustee Handbook - National Association of Independent Schools, National Association of Independent Schools, 1989

Buchholz, Rogene A., and Rosenthal, Sandra B., Business Ethics, Prentice-Hall Inc., 1998

Carver, John, Boards That Make A Difference, Jossey-Bass Publishers, San Francisco, 1997

David, Fred R., Concepts of Strategic Management, Prentice Hall, 1997

[www.asaenet.org](http://www.asaenet.org), American Society of Association Executives

[www.associationplace.com](http://www.associationplace.com), Canadian Society of Association Executives

Board Development - Roles and Responsibilities of Not-For-Profit Boards, Board Development Program, Volunteer Services Branch, #907 Standard Life Centre, Edmonton AB, Ph. 780-427-2001

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## Links

What is a CEDIF Co-operative Associations Act <http://nslegislature.ca/legc/statutes/coopassc.htm>

NS Co-op Council Publications [http://www.nsko-opcouncil.ca/serv\\_publications.php](http://www.nsko-opcouncil.ca/serv_publications.php)

Registry of Joint Stocks <http://www.gov.ns.ca/snsmr/access/business/registry-joint-stock-companies/forms-information.asp#14379>

Regulations Respecting Community Economic-Development Corporations

CEDIF Frequently Asked Questions <http://www.gov.ns.ca/nssc/corporatefinance/cedif.htm>

Equity Tax Credit <http://www.gov.ns.ca/finance/en/home/taxation/personalincometax/equitytaxcredit/equitytaxeligibilityforinvestors.aspx>

[http://www.nsko-opcouncil.ca/serv\\_publications.php](http://www.nsko-opcouncil.ca/serv_publications.php)

**FarmWorks Investment Co-operative Limited**

**Articles and By-laws and Governance**

**Revised October 11<sup>th</sup>, 2011 – Revised April 26<sup>th</sup>, 2014**

**NAME:**

The name of the association is FARMWORKS INVESTMENT CO-OPERATIVE LIMITED

**OBJECTIVES:**

The objectives for which the co-operative is established are:

To promote strategic and responsible community investment in food production and distribution in order to increase access to a sustainable local food supply for all Nova Scotians.

including the act and things set forth under Section 16 of the Co-operative Associations Act.

**LIABILITY:**

The liability of the members is limited.

**REGISTERED OFFICE:**

70 Eden Row, Wolfville RR2, Nova Scotia, B4P 2R2

Phone: (902) 542-3442 Email: lbest@ns.sympatico.ca

The board may from time to time determine the place or places at which the business of the co-operative shall be carried on.

**THE SEAL:**

The seal of the Co-operative shall be such as to make a circular impression having two circles between which are the words: "FARMWORKS INVESTMENT CO-OPERATIVE LIMITED" and inside the inner circle the words, "Incorporated 2011"

**FINANCIAL YEAR:**

The financial year of the Co-operative shall be the first day of JANUARY to the last day of DECEMBER

**MEMBERSHIP:**

The Board shall determine the conditions of membership including the requirements to pay equity in the form of fees or shares. Members shall withdraw or be excluded from membership according to Section 29 or Regulations 4 and 6 of the Co-operative Associations Act , and also if a member acts contrary to the best interests of the Co-operative.

**POLICY WITH RESPECT TO WITHDRAWAL OF MEMBERSHIP AND SHARES:**

(as directed by Co-operative Associations Act)

1. A member may, in the manner prescribed by the by-laws and with the approval of the board of directors, withdraw from membership in the association, whereupon he shall, subject to the regulations and the by-laws, be entitled to a refund of any amount held to his credit in share capital or otherwise in the association and upon which the association has no charge or other lawful claim but
2. The board of directors may require notice not exceeding six months of any proposed withdrawal of a member's capital or other equity;
3. If the value of the shares as determined by the directors and approved by the Inspector is less than par, the board of directors shall have the right to refund to a withdrawing member only such proportion of the par value of his shares as may appear to it to be just and reasonable;
4. The association shall not be required to permit the withdrawal of a member's capital or other interest at any time when in the opinion of the board of directors such withdrawal would impair the financial stability of the association.

POLICY WITH RESPECT TO EXCLUSION FROM MEMBERSHIP AND SHARES:

(as directed by Co-operative Associations Act)

1. A member who fails in the observance of any of the regulations or the by-laws of the association may, by resolution of the board of directors, be excluded from membership in the association whereupon he shall be entitled to a refund of any amount held to his credit in share capital or loan capital and deposits and upon which the association has no lien or other lawful claim but
2. Notice shall be sent by the board of directors by registered mail to such member to his last known address setting forth a date not sooner than one month after the date of mailing the notice upon which he is to be excluded from membership in the association and stating the reasons therefore;
3. The member so notified, if he is not satisfied with the decision of the board, may at any time before the date upon which it is proposed that he is to be excluded from membership in the association request the board to place the matter on the agenda for consideration by the membership during the next special or general meeting of the members; and
4. The member who has been notified that he is to be excluded from the association shall have the right to appear personally before the meeting to give reasons why he should not be excluded after which the question shall be submitted to a vote of the meeting and the decision of the meeting thereon shall be final. *R.S., c. 98, s. 29.*

POLICY WITH RESPECT TO CONFLICT OF INTEREST

1. Each Director must disclose in writing any family, personal or financial connection with any investment being considered by the Board of Directors at the beginning of the deliberations.
2. Upon making a declaration of conflict of interest the director shall excuse himself from the deliberations and from the meeting until such deliberations are concluded and a decision has been made.
3. The Board of Directors has discretion to decide whether the connection of the Director amounts to a conflict of interest and a resolution encompassing the decision of the Board of Directors shall be put to a vote requiring a two thirds majority to pass.
4. The Board of Directors may request information and elaboration from any director who has declared a conflict of interest.
5. Any Director who fails to disclose a conflict of interest which he/she recognized or reasonably ought to have recognized may be asked to resign from the Board.
6. The decision of the Board of Directors on matters of conflict of interest is final

MEETINGS:

1. The annual meeting of the members shall be held within four months of the year-end. Special meetings shall be held when called by the secretary as directed by the directors, or by a written request of the members as per Section 5(2) or Regulation 17 of the Co-operative Associations Act. All meetings shall be at such place as the directors or the Inspector may from time to time determine.
2. At all meetings FOUR of the members shall constitute a quorum.
3. Notice of annual or special meetings shall be posted prominently in the place of business of the co-operative and shall also be mailed by post or email to the registered address or email address of the members at least ten days prior to the meeting.

BOARD OF DIRECTORS:



1. The board of directors shall consist of A MINIMUM OF NINE AND A MAXIMUM OF FOURTEEN directors who shall be elected for a term of THREE years arranged so that a MINIMUM OF FOUR AND MAXIMUM OF SIX director(s) are elected each year. The maximum number of consecutive terms a director may serve is TWO.
2. The directors shall meet as often as the business of the Co-operative may require but not less than quarterly. A quorum shall consist of FOUR directors.
3. If a vacancy occurs in the board of directors, the directors may appoint a member to fill that vacancy until the next annual meeting when the members shall hold an election to complete the term of vacancy.
4. Eligibility for election to the board of directors:
  - agrees with objectives of the cooperative;
  - accepts leadership position when requested;
  - supports the Co-operative wherever possible.

**DUTIES OF OFFICERS:**

The board may appoint a president, secretary and other officers who are responsible to the board. Their duties shall be specified by the board.

**SHARES AND MEMBER LOANS:**

- (a) The Board shall determine the conditions of membership including the requirements to pay equity in the form of fees or shares.

For co-operatives limited by shares:

- The par value of shares is ONE HUNDRED DOLLARS (\$100.00) each.
- There shall be ZERO TO A MAXIMUM OF 5% dividends paid on shares.
- A minimum number of shares to be held by each member is one.

Each member may be required to lend to the Co-operative all or part of the patronage dividends payable to him/her by the Co-operative, and the Co-operative is authorized to apply to the member's account the said dividends during such time as she/he remains a member of the co-operative.

- (b) Member loans may be issued. Interest rates shall be determined by the board of directors, but shall not exceed 5% per annum.

**GENERAL RESERVE:**

A general reserve shall be created by allocating from retained earnings each year not less than 2% of the surplus until the general reserve is equal to 2% of the shares and member loans of the Co-operative.

**BORROWING POWERS:**

- (a) The Co-operative is hereby authorized to borrow money from its members for specific periods of time at specific rates of interest.
- (b) The Co-operative is authorized to exercise all and every power to borrow money and to secure payment thereof which is conferred upon it by the Nova Scotia Co-operative Association Act, Chapter 98, Acts of 1989.
- (c) The directors of the Co-operative may exercise all such powers and to all such acts and things as may be exercised or done by the co-operative in respect of the borrowing of money, and the provision of security for such borrowing, as has been delegated to the directors by the co-operative.
- (d) The directors of the Co-operative shall not, on behalf of the co-operative, authorize or approve capital borrowings or the guarantee of capital borrowings in excess of a total of FIVE THOUSAND DOLLARS (\$5,000.00) in a single fiscal year without having first obtained formal approval from a meeting of the members of the Co-operative by way of a special resolution.

**DISSOLUTION:**

If for any reason the affairs of the Co-operative are dissolved or wound up and there remains after satisfaction of all liabilities, including shares and/or member loans, any property whatsoever, it shall be divided among the members in proportion to their shares in the Co-operative.

**CORPORATE INDEMNIFICATION:**

Subject to the provisions of the (N.S.) Co-operative Associations Act, every director and senior officer or his/her heirs, executors and administrators, and estate and effects, respectively, shall at all times be indemnified and saved harmless out of the funds of the Co-operative, from and against:

- (a) all costs, charges and expenses whatever that such director or officer sustains or incurs in or out of any action, suit or proceeding that is brought, commenced or prosecuted against the director or officer, for or in respect of any act, deed, matter or thing whatever, made, done or permitted by the director or officer in or about the execution of the duties of his/her office, and
- (b) all other costs, charges and expenses that the director or officer sustains or incurs in or about or in relation to the affairs thereof.

October 11<sup>th</sup>, 2011

Revised April 26th, 2014