

# Financial Supervision Commission

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## COMMISSIONERS' CODE OF CONDUCT REGARDING CONFLICTS OF INTEREST

(Adopted by the Board of Commissioners on 27<sup>th</sup> July 2006)  
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The Isle of Man Financial Supervision Commission (“the Commission”) is entrusted with far-reaching powers which should be exercised to secure a proper balance between the interests of persons carrying on the business of financial services, the users of such services, and in the interests of the public. In addition, the Commission has access to confidential information which must be used only in the interests of good regulation, rather than for the personal purposes of those privy to such information. Practitioners play a major part in the governance of many regulatory authorities and the Commission is no exception. To maintain public confidence in its regulation, the Commission should be able to demonstrate that the actions of such practitioners are free from any suggestion of improper influence or criticism.

This Code is designed to maintain confidence in the regulatory system by setting out standards which:-

- reflect the high standards of integrity expected of professionals;
- ensure that information will be properly handled; and
- ensure that regulatory decisions are not improperly influenced by conflicts of interest.

An important objective of the Code of Conduct is to assist Commissioners to identify for themselves relevant conflicts of interest which may arise and to be aware of the appropriate action which may need to be taken to deal with these conflicts.

No matter how robust a code of conduct may be, the primary responsibility for ensuring the proper handling of a conflict of interest lies with the Commissioner with the conflict and the treatment of such conflict is reliant on the integrity of the Commissioner. This Code is designed to reinforce, rather than replace personal integrity.

## **1. What is a conflict of interest?**

A conflict of interest arises in a situation where an individual with responsibility to act in the interests of others may be affected in his action by a relevant personal interest including a business interest or association of his own.

## **2. Impact of conflicts of interest**

Not all conflicts of interest will be significant. The Code of Conduct applies to relevant conflicts of interest only where an independent third party might reasonably take the view that there is a real risk that the impartiality of the Commissioner's judgement or course of action might be affected by the conflicting interest.

## **3. Official Secrets and Restrictions on Disclosure of Information**

Upon appointment Commissioners are required to sign the Official Secrets Act 1989 of Parliament. All information received or discussed by the Board or obtained as a result of being a Commissioner is confidential and will not be communicated to third parties either while in office or following their resignation as Commissioner.

Nothing in this Code shall amend or supersede the obligation of a Commissioner to observe the restrictions on Disclosure of Information contained within all the Commission's relevant legislation enacted currently or in the future.

## **4. Tackling Conflicts**

In deciding how to deal with a conflict of interest, it is important to recognise that different conflicts give rise to different problems.

The main risks are that:-

- the public perception of the independence and integrity of the Board and individual Commissioners might be compromised which may lead to regulatory decisions being adversely contested and affected;
- the effectiveness and speed of regulatory decision-taking may be impeded;
- regulatory information may be used for private or commercial gain, reducing the willingness of others to supply it.

## 5. Guiding Principles

In addressing these problems, the following guiding principles should be followed:-

- **Regulatory Action**  
It is important that Commissioners take effective steps to ensure that regulatory action is, and is seen to be, unaffected by any conflict of interest, and must accordingly ensure that any conflict of interest to which an individual Commissioner may personally be subject are disclosed. The agreed procedures for dealing with the conflicts must be adhered to in order that it does not affect the impartiality of regulatory action or create a risk that action could be called into question.
- **Disclosure**  
It is important to disclose on each and every occasion all relevant interests which could conflict with duties performed as Commissioners.
- **Use of Information**  
It is important not wrongly or improperly to use information which is received whilst acting as a Commissioner.
- **Confidentiality**  
It is important that, in order not to compromise their position, Commissioners should retain confidentiality at all times.
- **Relationships**  
It is important not to exploit or appear to exploit to personal advantage, any personal or professional relationships Commissioners may have with an individual or organisation regulated by the Commission or those in the process of applying for a licence.

If necessary, guidance from the Chairman (and the Deputy Chairman and/or other Commissioners (which may include the Risk and Internal Control Committee of the Board), if felt necessary) on the handling of a conflict of interest should be sought at as early a stage as possible. Those responsible for guidance on the handling of conflicts of interest should always look at the issue from the viewpoint of an outsider. Decisions on handling conflicts of interest must be publicly defensible.

## 6. Applying the principles

### Disclosure

In dealing with a conflict of interest, the starting point will be to disclose it. This enables others, who are not affected by the conflict, to assist in deciding how it

should be managed, and if disclosure is timely, it enables action to be taken to deal with it without affecting the quality or promptness of regulatory action.

Where a Commissioner has any direct or indirect personal interest in the outcome of the deliberations of the Commission in relation to any matter:-

- he shall disclose the nature of his interest at a meeting of the Commission in person or by means of a written notice brought to the attention of the Commission; and
- he shall withdraw from any deliberations of the Commission in relation to that matter and not vote upon it. He will not be physically present during the discussion as his presence could inhibit free debate.

The Chief Executive and Secretary will do their best to identify obvious conflicts in advance, so that relevant papers can be withheld from circulation to the Member concerned. Subsequent minutes will be dealt with similarly. The Member will be advised that an apparent conflict exists and that this course of action has been taken.

Sometimes, it will be desirable for potential relevant conflicts of interest to be covered in a general advance disclosure. This may be the case, for example, where decisions which might be affected by the conflict may be expected to come up regularly, and continuing arrangements are needed to minimise the effect of the conflict or where it would not be appropriate for a particular Commissioner to be given access to information.

However, except where a Commissioner's connection with a particular area of business is well known, disclosure must also be made at any time that the conflict becomes relevant. A general advance disclosure is no substitute for a specific disclosure in such a case.

There may, exceptionally, be a case in which it is acceptable for a Commissioner with a conflict simply to withdraw from involvement in the matter concerned, without disclosing the interest. This may be appropriate, for example, where disclosure of the conflict could itself involve a breach of other duties (for example, duties of confidentiality relating to a proposed take-over). However, the Commissioner in such a case should ensure that his non-involvement is clearly established.

### **Safeguards following disclosure**

Sometimes, the risk posed by a relevant conflict of interest will mean that safeguards beyond disclosure need to be introduced. This will depend on the nature and directness of a Commissioner's interest, and the nature and importance of the problem to which it gives rise.

Where disclosure alone is insufficient and the problem concerns the quality or validity of regulatory decision-taking, it will generally be right for the individual concerned not to be given access to the information nor to take part in the decision-taking process. This will mean excluding him from distribution of documents, or attendance during discussions, on the subject concerned.

In some exceptional cases, the application of these safeguards may have such a regular and significant impact on a Commissioner's role that to maintain effective and prompt decision-taking requires that he needs to stand down from the Board.

## **7. Examples**

While it is recognised that there will not always be simple answers, it may help to give some illustrations of possible relevant conflicts of interest and ways of dealing with them:-

- the Commissioner is an industry practitioner, known for his expertise in a particular sector in the industry, who is called on to take part in rule-making for that sector; his interest as a current practitioner need not disqualify him. However, where rules are being determined or there may be a perceived commercial advantage, the member concerned should declare an interest. Unless the Chairman regards the interest as too conflicted, the member would continue to be present in the discussion and decision making process. The Commission will keep the potential for such conflicts closely in mind, and affected Commissioners should ensure that the integrity of their position is never compromised.
- the Commissioner has a close link with an applicant but without any direct financial interest, for example, because he is or has been a consultant to its dominant shareholder; he should not take part in the decision or be present at the meeting;
- the Commissioner has some form of financial interest in approving a licence application, for example, because he has a shareholding in the applicant; he should not take part in the decision on its admission or be present at the meeting;
- the Commissioner has a financial interest in an organisation whose business may be affected significantly by competition from a particular business being discussed by the Commission: depending on the closeness of the conflict, it may be right for him not to take part in a decision or be present at the meeting;
- the Commissioner has a financial interest in a firm, where confidential information is received about a significant competitor: depending on the

nature and the extent of the interest, and the nature of the information, it may be right for him not to be given that information;

- there is a regulatory need for transfer of information to another regulator: the Commissioner should not impede the transfer of the information on the grounds that it shows him (or his organisation) in a bad light;
- the Commissioner is aware that intervention action is about to be taken against a licenceholder: he should not disclose that information to market practitioners to enable them to reduce their exposure to the licenceholder, or use the information for such a purpose.

## **8. Improper Use or Disclosure**

Improper use or disclosure of information obtained directly or indirectly by virtue of a Commissioner's position with the Commission may lead to prosecution.

## **9. Hospitality and Gifts**

From time to time, Commissioners are likely to be offered hospitality or gifts during dealings with licenceholders and other organisations. It is not always appropriate to decline such offers but Commissioners must at all times be cautious as acceptance may be improper or create the impression of undue influence.

In deciding whether it would be appropriate to accept invitations Commissioners should bear in mind that the Commission must be able to demonstrate that it follows best practice as a public regulatory body and that the Commission can demonstrate that any actions are above reproach.

It is difficult to be prescriptive about what is and what is not regarded as acceptable. Reasonable on-Island hospitality is acceptable however gifts which exceed 0.5% of the prescribed annual sum payable to Tynwald Members under the Payment of Members Expenses Act 1989 should be disclosed in the register held by the Secretary. No services should be accepted in lieu without payment.

## **10. Personal Account Dealing By Commissioners**

As Commissioners have access to confidential information about organisations licensed by the Commission, their dealings in shares and related investments may come under close scrutiny in certain circumstances. It is therefore essential that Commissioners manage their personal investment activity so as to minimise the possibility of embarrassment to themselves or the Commission and they can demonstrate that proper arrangements are in place which show that individual investment decisions have not been influenced by information made available in confidence to the Commission and in the course of its business.

The Commission recognises that Commissioners who are partners in, directors of, or employed by, organisations licensed by the Commission will be subject to their organisation's or employer's rules for personal account transactions. The Commission is confident that such Commissioners will comply with those requirements and attaches the highest importance in their doing so.

Commissioners are reminded that the use of confidential information, whether or not about organisations regulated by the Commission, or those in the process of applying for a licence, and whether for personal dealings or for procuring any other person to deal on a Commissioner's behalf, may give rise to prosecution under the Insider Dealing Act 1998.

To this end, it is important that the Commission is kept informed of interests in investments which might be perceived as likely to cause a conflict with their duties. This information will be treated sensitively and in the strictest confidence at all times.

Commissioners must notify the Chairman or Deputy Chairman of any dealing in shares and related investments in institutions regulated by the Commission or those in the process of applying for a licence within three working days of the approval.

## **11. Closely Connected Parties**

This Code cannot be imposed upon persons who are not Commissioners and this includes families of Commissioners and other closely connected parties e.g.:-

- spouses (but not a former spouse or a spouse who is living separately and apart from the Commissioner);
- co-habitees (i.e. a person, whether or not of the opposite sex, living with the Commissioner in a relationship similar to that of husband and wife);
- children under the age of 18; other persons for whom members of staff take the financial decisions; and
- trusts of which a staff member is a trustee.

However, Commissioners must recognise that there is potential for criticism if a person connected to them presents a conflict or is found to have benefited as a result of holding shares and related investments in an organisation regulated by the Commission or in the process of applying for a licence.

## **12. Disclosure of Bank Accounts**

Commissioners are required to disclose banks licensed by the Commission with whom they hold individual and/or joint current or deposit accounts.

They must also disclose the names of banks outside the Island with whom they hold such accounts that are within the same group as a bank(s) licensed by the Commission.

Commissioners should declare when such accounts are closed (if that ends the deposit relationship with that bank) and when any new accounts are established with banks that are not already disclosed.

### 13. What interests and information should be disclosed?

In addition to the guidance on conflicts of interests, Commissioners are required to disclose to the Secretary of the Commission certain interests, both financial and otherwise, which are relevant to the Commission’s regulatory role, for entry into the Commissioners’ Register of Interests (“the Register”). Disclosure shall be made within five business days after the Commissioner first becomes aware of the facts requiring such disclosure.

Commissioners are required to disclose the following, in respect of themselves and any Closely Connected Party (see paragraph 11):

Interest	Information to be disclosed
Interests in any entity regulated by the Commission <sup>1</sup> or in the process of applying for a licence, including - <ul style="list-style-type: none"> <li>• Shares including interests in shares (e.g. options), or interests of some other description (e.g. partnership options).</li> <li>• Collective investment schemes</li> <li>• Bonds</li> </ul>	The name of the company, partnership or entity. The number of shares, interests or bonds, or the value thereof need not be disclosed if the holding is less than 5% of the issued capital.
Directorships or partnerships of any entity regulated by the Commission <sup>1</sup> or in the process of applying for a licence, either current or in the past three years.	The name of the company or partnership, date of appointment and date of resignation (if applicable). The sector in which the company or partnership operates.
Employment as a manager or key staff by any entity regulated by the Commission <sup>1</sup> or in the process of applying for a licence either current or in the past three years.	The name of the employer, details of the role held, date of appointment and date of resignation (if applicable). The sector in which the employer operates.
Consultancy services (current or in the past three years) provided to any entity regulated by the	The name(s) of the organisation(s) the services are provided to and relevant dates.

<sup>1</sup> Includes any parent, subsidiary, or other group company.

Commission or in the process of applying for a licence, or to any organisation that provides services to the Commission.	The sector in which the organisation(s) operate.
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#### **14. Information that does not need to be disclosed.**

Commissioners would not ordinarily be expected to disclose the following:

- The name of any firm through which he obtains, or arranges, insurance cover of any description;
- The name of any firm through which he obtains investment advice (whether on a discretionary basis or non-discretionary basis);
- The name of any financial institution through which he has contracted to provide a pension.

Notwithstanding the above, there may be circumstances in which a Commissioner may feel it prudent to declare an interest and withdraw from relevant discussions e.g. where the Commission is considering taking regulatory action against an entity of which the Commissioner is a significant client/customer or there is a serious dispute between the Commissioner and a product or service provided by the entity.

#### **14. Investments under discretionary management**

Disclosure should also relate to investments under discretionary management except in cases where instructions to, or discussions with, the managers of such discretionary arrangements relate only to matters of broad strategy and not at all to individual investments.

There will be occasions where a Commissioner becomes aware of the existence of a holding in an entity regulated by the Commission (or a holding in such entity's parent, subsidiary, or other group company) within his discretionary managed portfolio. Even though it may not be possible to influence dealings to his benefit, the Commissioner should consider making a specific declaration of a potential conflict as soon as he becomes aware of the holding and take appropriate action in relation to the consideration of any issue which might significantly affect the value of the holding concerned.

#### **15. Access to the Register**

Except with the agreement of the Commissioner concerned, access to the information held in the Register will be confined to the Chairman, Deputy Chairman, other Commissioners, the Chief Executive and the Secretary to the Commission (and any staff assisting the Secretary in her duties). The Secretary of

the Commission annually will provide Commissioners with a copy of current disclosures and ask for confirmation that it is correct.

#### **16. Record Keeping**

Records will be kept by the Secretary of the Commission of all disclosures of conflicts of interest and the steps taken to handle them, as well as records of all disclosures of Commissioners' interests.

All Directorships held by Board members will be disclosed publicly on the Commission's web-site.

#### **17. Notes**

These arrangements apply equally to all Commissioners.

Unless the context otherwise requires, words importing the masculine gender shall include the masculine and feminine genders.

In accordance with its policy of transparency, this Code of Conduct will be made publicly available via the Commission's website.

#### **18. Declaration and Disclosure**

To confirm you have read and understood this Code, and to make the required disclosures, Commissioners will be asked to review and update a schedule of disclosures. This should be signed and dated and provided to the Secretary of the Commission.

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