



Financial Services Act 2008

Guidance Note - Rule 8.9

Conflicts of Interest Policy

Status of guidance

The Isle of Man Financial Services Authority (“the Authority”) issues guidance for various purposes including to illustrate best practice, to assist licenceholders to comply with legislation and to provide examples or illustrations. Guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.

This document is not intended to be used without reference to the Financial Services Rule Book, nor can the Isle of Man Financial Services Authority accept responsibility for its accuracy. It remains the user’s responsibility to review the source legislation and ensure compliance with the Rule Book requirements.

Introduction

This guidance is to assist licenceholders to comply with rule 8.9 and to comply with other rules relating to the identification and management of conflicts of interest.

In designing a conflicts of interest policy to meet the requirements of rule 8.9, a licenceholder should also take into account the following rules:

- Rule 6.11 Conflicts of interest – general;
- Rule 6.40 Disclosure of conflicts of interest (applies to All Class 2 only); and
- Rule 8.10 Conflicts of interest register.

A licenceholder’s conflicts of interest policy should also consider other requirements, such as

- Rule 6.36 dealings by employees on own account (applies to All Class 2 only);
- Rule 8.7 Remuneration policy; and
- Companies Act 1931 s148 Disclosure by directors of interest in contracts.

This guidance is aimed mainly at smaller licenceholders which do not have a group policy. It is not exhaustive.

Benefits of a conflicts of interest policy

A conflicts of interest policy supports the Isle of Man Financial Services Authority's regulatory objective of securing an appropriate degree of protection for the customers of financial service providers.

It has three main benefits:

1. To protect customers from being unfairly disadvantaged relative to the licenceholder or relative to another customer, as a result of an undisclosed or mismanaged conflict of interest;
2. To set standards for directors and employees of licenceholders in the conduct of their duties. This helps to protect those who follow the policy from falling below the required standards; and
3. To help to protect the licenceholder from complaints or litigation from its customers who consider that a conflict has not been appropriately managed.

Scope of conflicts of interest policy

Under rule 8.9 the policy must include arrangements to identify and manage 'licenceholder to client' conflicts. In addition, rules 6.11 and 6.40 require it to address 'client to client' conflicts and disclosure to clients.

Segregation of duties

Rule 8.9 provides for the segregation of duties where the licenceholder's operation is large enough for this to be feasible.

Internal reporting

The policy should inform staff:

- How, and to whom within the licenceholder, they should disclose their interests;
- Who will take decisions on how to manage conflicts where they arise;
- Who maintains the register of conflicts of interest under rule 8.10.

Terms of business

If it is possible for a licenceholder to act for clients who are in potential or actual competition with each other, its terms of business should draw attention to this fact.

Own account dealing

Class 2 licenceholders are subject to rule 6.36 "Dealings by employees on own account" and should address own account dealing when establishing their conflicts of interest policy.

Remuneration policy

Licenceholder's which are subject to rule 8.7 should consider any incentive schemes so as to avoid the encouragement of improper or imprudent behaviour when establishing their conflicts of interest policy.

Other legal requirements

Rules 8.1 and 8.4 require licenceholders to have due regard to legal requirements. An example would be company law.

Section 148 of the Companies Act 1931 (“section 148”) sets out requirements for the conduct of company directors who have an interest in a contract with the company. The first sub-section states:

“(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.”

Similar requirements may apply under the laws of other jurisdictions. Where a CSP supplies directors to a client company, the directors should consider whether they have an interest in the contract between the CSP and the client company and take appropriate steps.

We would regard this as a prudent approach for any client company, irrespective of whether it is incorporated under the Companies Act 1931 or other legislation.

APPENDIX 1

Suggested contents list for a simple conflicts of interest policy

1. Background

The requirements that the policy sets out to meet, for example:

 - a. IOMFSA rules
 - b. Company law
2. Objectives of the policy

For example:

 - a. Customer protection
 - b. Protecting the good name of the licenceholder
 - c. Avoidance of complaints and litigation
 - d. Setting a clear basis for staff conduct
3. Application of the policy
 - a. Examples of the circumstances in which a conflict could occur. These will vary according to the nature of the licenceholder's business.
4. Managing a conflict

For example:

 - a. To whom the conflict should be reported
 - b. Recording on the register
 - c. Who decides how to manage the conflict
5. Steps which could be taken to remove, control, or mitigate the conflict.

For example:

 - a. Disclosure to the beneficial owner
 - b. Disclosure under company law
 - c. Withdrawal
 - d. Segregation of duties
 - e. Third party involvement
6. Monitoring of known conflicts of interest
7. Consequences of breach of the policy

For example, any disciplinary action that may be taken.
8. Register
 - a. A [template conflicts of interest register](#) is available.

APPENDIX 2

Illustration - client to client conflicts

A CSP's client company "A" proposes to sell certain property. Another client company "B" is a potential buyer of the property.

Action as a result of a conflicts of interest policy might cover, for example:

1. Internal reporting of the potential conflict;
2. Recording of the conflict in the register;
3. A decision on how to manage the conflict;
4. Disclosure to beneficial owners or their representatives;
5. Disclosures under company law (where this is required);
6. Segregation of duties amongst staff, where this is possible;
7. Referring aspects of the transaction to independent parties such as valuers and advocates; and
8. If necessary, withdrawing from one of the client relationships.