



# CONFLICT OF INTEREST, GIFTS AND HOSPITALITY POLICY

*Internal use only*

VERSION 10

Effective date: February 25, 2021

Chairman: \_\_\_\_\_

## Table of Contents

<b>Introduction.....</b>	<b>3</b>
<b>Regulatory Authority Act 2011.....</b>	<b>3</b>
<i>Conflict of Interest .....</i>	<i>3</i>
<b>Conflict of Interest Policies .....</b>	<b>4</b>
<i>Regulatory Matters .....</i>	<i>4</i>
<i>Day to Day Non-Regulatory Activities .....</i>	<i>4</i>
<i>Register of Interest .....</i>	<i>5</i>
<i>Reporting Changes in Interest .....</i>	<i>5</i>
<i>Adjudication or Public Consultation.....</i>	<i>5</i>
<i>Risk Mitigation.....</i>	<i>6</i>
<i>Annual Review of Transactions.....</i>	<i>6</i>
<b>Gifts and Hospitality Policy .....</b>	<b>7</b>
<b>Related Policies.....</b>	<b>7</b>
<b>Responsibilities .....</b>	<b>7</b>
<b>Review Date.....</b>	<b>7</b>
<b>Amendment History.....</b>	<b>8</b>
<b>Appendix 1: RAA Conflict of Interest Disclosure Declaration.....</b>	<b>9</b>
<b>Appendix 2: Miscellaneous Conflict of Interest Declaration Form .....</b>	<b>12</b>

# Introduction

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It is essential that the Regulatory Authority (the “RA”) establish and maintain a reputation for impartiality, integrity and high professional standards. The RA’s Board of Commissioners and employees (collectively “Members”) have a duty to act in the best interests of the RA and to support its objectives and statutory provisions, as set out in the Regulatory Authority Act 2011 (the “RAA”).

Members are required to conduct themselves in a professional manner which ensures the elimination of creation or appearance of a conflict of interest. This is to ensure that the public and regulated entities are confident that the decisions are not influenced by personal or outside interests. Members are prohibited from profiting or benefiting from the use of information obtained during their duties or providing confidential information to third parties.

It is important that Members adhere to the standard of conduct to ensure they are not put into positions where individuals’ interest could be perceived to be in conflict or damage the RA’s reputation. Members should be, and be seen to be, independent.

## Regulatory Authority Act 2011

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### Conflict of Interest

#### Section 31

*(1) A conflict of interest shall be deemed to exist in any case in which an RA Commissioner or Member of staff participates in a decision-making or advisory capacity in any adjudication or public consultation that concerns-*

- a) a business in which that person, or that person’s spouse, parent or child, is a member or shareholder or has any private interest, whether direct or indirect or;*
- b) any other matter in which the person’s private interest may reasonably be perceived as conflicting with the person’s official duties.*

*(2) In any case in which a conflict of interest exists, the Commissioner or Member of staff that has the conflict shall not participate in a decision-making or advisory capacity in the adjudication or public consultation unless he/she-*

- a) submits a written declaration to the Board that fully discloses the nature of the conflict;*
- b) receives the unanimous approval of the voting members of the Board; and*
- c) in the case of an adjudication, also received the written consent of all parties to the adjudication at the time the conflict of interest is disclosed.*

*(3) The Chairman shall take all reasonable actions to ensure that no member of the Board contravenes the prohibition contained in subsection (2).*

*(4) The Chief Executive (“CE”) shall take all reasonable actions to ensure that no other Member of staff contravenes the prohibition contained in subsection (2).*

*(5) In any case in which a Commissioner is disqualified from participating in an adjudication or public consultation pursuant to subsection (2), the Chairman (or, in any case in which the Chairman is disqualified, the Commissioner who has served on the Board for the longest period of time), after conferring with the members of the Board who are not disqualified, may appoint a person to act in place of such Commissioner.*

*(6) Any person appointed pursuant to subsection (5), when acting within the scope of the appointment, shall be deemed to be a Commissioner, and shall be eligible for remuneration commensurate to the service provided.*

*(7) Each Commissioner and each Member of staff shall submit an annual written declaration to the CE stating whether they, or their spouse, parent or child, has any direct or indirect financial interest in any sectoral provider or in any other*

*person who has or may directly benefit from any regulations, or from any administrative determination made by the RA, and the CE shall submit such a declaration to the Chairman.*

*(8) The Chairman or the CE, as the case may be, shall retain the declaration forms submitted pursuant to subsection (7) for not less than three years, and shall provide a copy of any declaration, to any person, on request.*

*(9) The Commissioners and Members shall not accept any gift or gratuity, either directly or indirectly, from any sectoral provider or from any other person who has or may directly benefit from any regulations, or from, any administrative determination made by the RA, unless the RA has granted a waiver pursuant to subsection (11).*

*(10) Contravention of either of the prohibitions contained in subsections (2) or (9) shall provide a basis for removal of a Commissioners or dismissal of a Member of staff.*

*(11) The RA shall make rules specifying the circumstances and the procedures by which a Commissioner or Member of the staff may be granted a waiver of the prohibition contained in subsection (9),*

## **Conflict of Interest Policies**

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### **Regulatory Matters**

A conflict of interest may exist when dealing with regulatory matters, i.e. an RA adjudication, public consultation, administrative determination, general determination, advisory guidance or investigation etc.

All new Members are required to complete conflict of interest disclosure declaration forms, as shown in Appendix 2, at the start of their term of office or respective employment as the case may be, and annually thereafter. Commissioners appointed and staff employed at the RA, as of the Policy effective date, shall complete this form within 2 weeks of the effective date of their appointment or respective employment.

In April of each year, the Human Resource Manager (“HR Manager”) shall provide the conflicts of interest disclosure declaration form to each Member who must complete the declaration accurately and completely within 2 weeks and return it to the HR Manager. When reporting interest, Members are bound to disclose all interest and relationships.

It is the responsibility of the CE or the Board to determine if an interest constitutes a conflict or the appearance of a conflict in respect of any adjudication, public consultation, administrative determination, general determination, advisory guidance or investigation and resolve per RAA, Section 31.

*Please refer to Appendix 1: “Conflicts of interest disclosure declaration”*

### **Day to Day Non-Regulatory Activities**

A conflict of interest may exist when performing the day-to-day non-regulatory activities of the RA, i.e. procurement of goods and services but excludes regulatory matters. In determining whether an actual, potential, or perceived conflict of interest exists in each situation, the CE will consider the specific details of the situation and make a determination based on the totality of the circumstances. Clear guidelines and principles for reporting and managing actual, potential and perceived conflict of interest will assist Members in maintaining the highest level of integrity in their endeavors.

An actual conflict of interest arises in a situation where financial or other personal or professional considerations compromise an individual’s objectivity, professional judgment, professional integrity and/or ability to perform his or her professional responsibilities to the RA.

In connection with any actual or possible conflict of interest in the procurement process, Members must disclose the existence of an actual or potential conflict of interest to the CE immediately, except for the CE, who must report any actual or potential conflict to the Chairman of the Board.

Such disclosure will require Members to complete a Miscellaneous Conflict of Interest Declaration Form and take the steps set forth in the form. The form shall include details of the action taken to manage the conflict of interest and will/may be auditable.

*Please refer to Appendix 2 “Miscellaneous Conflict of Interest Procurement Declaration Form”*

### **Register of Interest**

The RA will maintain a register, to be held by the HR Manager, detailing all Members, their reported interest and any decisions made by the Board in regard to risk mitigation,

The register of interest will be disclosed to the Chairman of the Board:

- At the Board meeting following the receipt of updated forms in April
- Following a reported change in interests; and
- Prior to adjudication proceedings.

Conflicts of Interest declarations should form part of the standing agenda for each Board meeting and any known or apparent conflict should be disclosed to the Chairman.

### **Reporting Changes in Interest**

Conflicts of interest are not static and may change during the course of the year. The following list is provided to illustrate the types of events which may result in a change in interest which should be reported (this list is not exhaustive):

- New entities becoming subject to regulation or new sectoral providers;
- Members’ interest changing (e.g. a Commissioner may acquire shares in a regulated entity through an inheritance);
- The circumstances of Members’ family members<sup>1</sup> may change (e.g., an employee’s spouse may accept an executive level employment with a regulated entity); and
- The principals of a sectoral provider may change.

Conflicts should be monitored throughout the year to ensure the effectiveness of safeguards. Members are responsible for ensuring all conflicts are fully disclosed.

Any newly arising conflicts should be immediately brought to the attention of the HR Manager, CE and the Board and the register updated accordingly. Members are responsible for complying with this Policy, regardless of whether they report or register their conflict of interest.

### **Adjudication or Public Consultation**

Prior to any RA adjudication proceedings or public consultation, the Secretary will provide a list of all parties involved in the proceedings which must be reviewed by the Members to report potential interest they, their spouse, parent or child may hold.

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<sup>1</sup> For the purpose of this policy, family members include those designated in Section 31 (7) of the Regulatory Authority Act 2011

Where a conflict has been identified, Members must take the following steps:

1. Submit a written declaration to the Board that fully discloses the nature of the conflict;
2. Obtain the unanimous approval of the voting members of the Board to participate despite the conflict; and
3. In the case of adjudication, obtain the written approval of all parties involved in the proceedings at the time the conflict is disclosed.

Where these three steps have been followed, as applicable, the Member may participate in an advisory or decision-making capacity at the adjudication, public consultation, administrative determination, general administrative, advisory guidance or investigation.

### **Risk Mitigation**

Not all interests constitute a conflict and the CE must consider each interest and determine if risk mitigation is required. Where conflicts are noted, the Member that has the conflict shall not participate in a decision-making or advisory capacity in the adjudication or public consultation, administrative determination, general determination, advisory guidance or investigations unless he/she has complied with procedures set forth in, Adjudication or Public Consultation clause above.

### **Annual Review of Transactions**

A register of all related parties and transactions with these related parties will be kept throughout the year by the CE. At the end of each financial year, a search of the RA's ledgers will be carried out to ensure that no transactions have been carried out that have not been adequately disclosed in the financial statements as related party transactions.

Failure to adhere to the Conflict of Interest policy may lead to disciplinary action.

## Gifts and Hospitality Policy

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As per section 31 (9) of the RAA, no Member should accept any gift or gratuity where it might be perceived to be a breach of their independence, subject to a waiver of the prohibition in accordance with Section 31 (11) of the RAA. The following guidelines have been established by the RA as per subsection 31 (11) of the RAA:

1. Should any gifts and hospitality be received they should be recorded by the Secretary on the gifts and hospitality register. The register should be regularly reviewed by the Board.
2. Cash or near-cash<sup>2</sup> gifts may never be accepted by Members or their immediate family members i.e., parent, spouse or children (when outside their usual scope of business), as this could be perceived as bribery.

Failure to adhere to this may lead to disciplinary action.

## Related Policies

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The RA Employee Handbook should be read in conjunction with the Conflict of Interest policy.

## Responsibilities

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The Policy shall be reviewed annually by the HR Manager and all recommended changes, updates must be submitted to the CE for review and approval for submission to the Board for its review and approval.

It is the responsibility of the CE to review operations and activities on a periodic basis and to implement this Policy. The CE delegates this oversight responsibility to the HR Manager. The HR Manager has the day-to-day operation responsibility for ensuring the RA complies with this Policy.

## Review Date

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This policy will be reviewed as needed to incorporate any legislative changes.

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<sup>2</sup> Near-cash gifts are instruments such as bonds, shares, gift certificated or gift cards, precious metals, etc. that are convertible into cash.

## Amendment History

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Date of Review	Version	Reason for Review	Reviewer	Approved By	Approval Date
<i>February 2, 2015</i>	3	Added Letterhead and formatting	Paull Davis		
<i>June 8, 2015</i>	4	Amendments made to policy	Paull Davis		
<i>July 1, 2015</i>	5	Amendments made to policy	Paull Davis		
<i>July 21, 2015</i>	6	Amendments made to policy	Paull Davis	Board of Commissioners	July 21, 2015
<i>April 13, 2017</i>	7	Amendments made to policy	Monique Lister	Board of Commissioners	April 13, 2017
<i>July 10, 2018</i>	8	Amendments made to policy	Monique Lister	Board of Commissioners	July 10, 2018
<i>March 31, 2020</i>	9	Amendments and formatting	Aqueelah Somner/ D. Williams	Board of Commissioners	April 21, 2020
<i>January 13, 2021</i>	10	Amendments and formatting	Aqueelah Somner	Board of Commissioners	February 25, 2021



## Appendix 1: RAA Conflict of Interest Disclosure Declaration

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I, \_\_\_\_\_, have read the Conflicts of Interest, Gifts and Hospitality Policy and in line with my statutory duties have completed this form accurately. I acknowledge that this Appendix 1 may be disclosed to the public in accordance with Section 31 (8) of the RAA.

In consideration of the policy, I hereby declare as follows:

- a) I have considered the sectoral providers, as well as any other entity that has or may directly benefit from any regulations, including companies affiliated with sectoral providers and sectoral participants, (the “Relevant Company/Companies”) for the purpose of identifying all business, professional or personal interest and relationships between myself as an individual or my spouse, parent, or child (collectively “Relevant Family”) and any of the Relevant Companies that may afford a direct or indirect financial interest in the Relevant Company (the “Potential Conflict”), including the following relationships:
  - i. Business or professional relationships (includes negotiations or arrangements concerning future employment or contracts with a Relevant Company; a former long term employment or contractual relationship with a Relevant Company; an ownership in a Relevant Company; on-going or successive contractual relationship, contractual or legal disputes with a Relevant Company) these should be disclosed in Section 1.
- b) I have disclosed all shareholdings and directorships that I hold in Relevant Companies:
  - i. Shareholdings are listed below in Section 2; and
  - ii. Directorships are listed below in Section 3.
- c) As at the date of this Conflicts of Interest Disclosure Declaration, to the best of my knowledge, information and belief, I indicate whether or not I or my Relevant Family have a personal, professional, or business , relationship or interest with any Relevant Company, or any affiliate of a Relevant Company, as set out below (and in the attached additional pages and documents, if necessary) that could constitute a conflict of interest.

☐ **NO RELATIONSHIP EXISTS** with any Relevant Companies that could constitute a conflict of interest or unfair advantage by me or my Relevant Family

☐ **RELATIONSHIPS EXISTS** with Relevant Companies that could constitute a conflict of interest, as indicated below:

### Section 1:

Describe the relationship concisely, but completely (e.g. if it is a contractual relationship, describe who the contract is with).

	Name of Company	Party to the Relationship (myself or Relevant Family)	Description of Relationship with Relevant Company
1			
2			
3			
4			
5			

### Section 2: SHAREHOLDERS

Please list all shares held by yourself in Relevant Companies and note whether these constitute a greater than 10% stake in the business.

Company Share held in	Do shares constitute greater than 10% ownership

Please list all shares held in Relevant Companies by Relevant Family and note whether these constitutes a greater than 10% stake in the business.

Individual holding shares	Company shares held in	Do shares constitute greater than 10% ownership

### Section 3: DIRECTORSHIP, OTHER REALTIONSIPS AND EMPLOYMENT HELD

Please lists all directorships, relationships and employment you hold or have held in Relevant Companies for the past two years, including dates held in a company or other organizations. Please include all consulting, directorships, trustee or partner positions.

Entity in which directorship/relationship/employment held	Dates held

If, after that date of this Conflict of Interest Disclosure Declaration, I become aware of any personal, professional or business relationship or interest with any Relevant Companies that could constitutes a Potential Conflict or unfair advantage, then I will immediately make full, true and plain disclosure in writing to the Secretary.

I irrevocably and unconditionally agree that a facsimile or scanned or PDF file type (Adobe Acrobat Portable Document format) from this Conflict of Interest Disclosure Declaration bearing my signature shall, for all purposes, be treated as the original of my Conflict of Interest Disclosure Declaration and shall be binding upon me in the same way as the originally signed version of this Conflict of Interest Disclosure Declaration.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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Name (print)

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Signature

## Appendix 2: Miscellaneous Conflict of Interest Declaration Form

This form should be used to report any other conflict that is not listed in Appendix 1, including potential or perceived conflicts and procurement related conflicts.

### Section 1: To be completed by the Member

Details of the Member reporting the Conflict of Interest	
First Name	
Surname	
Position	

  

Details of Conflict of Interest Disclosure	
Date (Potential Conflict) Occurred	
Date (Potential Conflict) was Identified	
Date (Potential Conflict) was Reported	
Conflict Characterized by:	<input type="checkbox"/> Relationship with family or friends <input type="checkbox"/> Relationship with external parties <input type="checkbox"/> Procurement relationship <input type="checkbox"/> Financial interest <input type="checkbox"/> Outside work activities (paid/unpaid) <input type="checkbox"/> Conflict of duty (e.g. membership of another public or private organization) <input type="checkbox"/> Other (please provide details below)
Anticipated Duration of Conflict	<input type="checkbox"/> 0-12 months <input type="checkbox"/> > 12 months

### Section 2: To be completed by the Chief Executive or Chairman (in the case of the Chief Executive)

Assessment of Conflict
<input type="checkbox"/> <b>DOES NOT</b> constitute a conflict of interest. I authorize the Member to continue the activity. GO TO SECTION 5
<input type="checkbox"/> <b>DOES</b> constitute an actual, potential or perceived conflict of interest. GO TO SECTION 3

### Section 3: Action Plan

It is the responsibility of the Chief Executive or Chairman (in the case of a disclosure from the Chief Executive), in consultation with Legal, to identify and, where necessary, create an action plan to manage the disclosing Member's conflict. If a Conflict of Interest (real or potential) has been identified, an action plan must be created with the disclosing Member and the Member's Manager (if applicable).

Action Plan	
I have reviewed the guidance material and request that the Member takes the following action to eliminate/manage the conflict of interest:	
<i>To be completed if the conflict relates to a Public Consultation:</i>  I have obtained the unanimous approval of all of the voting members of the Board for the Member to participate in the Public Consultation despite the conflict.	<input type="checkbox"/> Yes (Member may participate in the relevant Public Consultation)
	<input type="checkbox"/> No (Member may not participate in the relevant Public Consultation)
<i>To be completed if the conflict relates to an Adjudication:</i>  I have obtained the unanimous approval of the Board and all parties involved in the Adjudication for the Member to participate in the Adjudication despite the conflict.	<input type="checkbox"/> Yes (Member may participate in the relevant Adjudication)
	<input type="checkbox"/> No (Member may not participate in the relevant Adjudication)
I will ensure that this action plan is reviewed:	<input type="checkbox"/> N/A as the conflict is of short duration
	<input type="checkbox"/> Within 3 months
	<input type="checkbox"/> Within 6 months
	<input type="checkbox"/> Within 12 months
	<input type="checkbox"/> Other- please Specify:

#### **Section 4: Chief Executive/Chairman<sup>3</sup> Declaration**

The actions described in the Management Action Plan have been put into place to effectively manage any actual, potential or perceived conflict of interest disclosed in Section 2. The approach outlined in Section 3 ensure that the RA's interest and reputation is adequately protected.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

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**Name (print)**

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**Signature**

#### **Section 5: Member Declaration**

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary, the information provided and to review the accuracy of the information provided regularly; such review is to occur at least annually.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

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**Name (print)**

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**Signature**

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<sup>3</sup> To be completed by: (i) the Chief Executive; or (ii) the Chairman of the Board in the case of the Chief Executive.