
ANGUILLA FINANCIAL SERVICES COMMISSION



CONFLICTS OF INTEREST POLICY

DECEMBER 2010

**ANGUILLA FINANCIAL SERVICES COMMISSION
BOARD MEMBERS' CODE OF CONDUCT
REGARDING
CONFLICTS OF INTERESTS**

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1 Introduction

- 1.1 Decision takers in any organisation have a range of activities and association. Although breadth of experience is generally an asset in decision taking it will also often give rise to situations of conflict of interest.
- 1.2 Practitioners play a major part in the governance of many regulatory authorities and the Anguilla Financial Services Commission (the “**Commission**”) is no exception. The Anguilla Financial Services Commission Act R.S.A. c. F28 (as amended) imposes requirements which build in checks and balances such as the requirement for the composition of the Commission to be structured to secure a proper balance between the interests of persons carrying on the business of financial services, the users of such services, and the interests of the public at large.
- 1.3 However, these provisions do not diminish the need for the Commission to have its own internal arrangements to deal adequately with conflicts of interest. Indeed, it must be an essential element in enabling the regulators to command public confidence that regulation involving practitioners is not capable of criticism as self-interested regulation.
- 1.4 Regulatory decisions cannot command confidence, and therefore cannot be effectively supported and enforced, unless they are taken, and can be seen to be taken, with full information and free from any suggestion of improper influence.
- 1.5 Regulatory decisions, indeed any decisions involving the administration of public policy, are fraught with difficulty in all communities: in small communities independence and impartiality are even harder to maintain because the skills pool is smaller than in high population centres and individuals have to undertake many different roles and inevitably have long term relationships and connections with others who also undertake many roles. In this kind of an environment it is even more important that an authority such as the Commission sets itself the highest standards and both actually takes the issue – and is seen to take the issue – very seriously.
- 1.5 The Commission is entrusted with far reaching powers. These need to be exercised in the interests of good regulation, rather than for any personal purposes of the individuals concerned. In addition, regulatory authorities have access to confidential information. This must similarly be used only in the interests of good regulation, rather than for the personal purposes of those aware of it.
- 1.6 It is therefore important from the viewpoint of the Commission, of the individuals involved, and of those affected by their decisions, that conflicts of interest, which do arise, should be identified and effectively dealt with.
- 1.7 The Commission needs to have in place well-considered arrangements to deal with conflicts of interest. These need to be accompanied by a sound understanding of the need for vigilance in dealing with conflicts.
- 1.8 The Code is designed to maintain justified confidence in the regulatory system, by ensuring that:

- those providing information can be confident that it will be properly handled; and
- regulatory decisions are not improperly influenced by conflicts of interest.

1.9 In setting out these overall standards, this Code of Conduct is designed to encapsulate the standards which would apply under the ordinary law (which sets standards for dealing with conflicts both for fiduciaries and for those exercising public functions), and under the Financial Services Commission Act. Section 43 of the Financial Services Commission Act, R.S.A. c. F28 (as amended), covers disclosure of interest, and states:

Disclosure of interest

43. (1) A Board member who has any direct or indirect personal, professional, business or pecuniary interest in any matter which falls to be considered by the Board shall, as soon as reasonably practicable, complete a declaration of interest in the prescribed form and submit it to the Governor and to the Chairman.

(2) A Board member who has declared an interest under subsection (1) shall withdraw from any meeting whilst the matter in respect of which he has declared an interest is being considered by the Board and shall not express any view or take part in any vote concerning the matter.

(3) The Chairman shall draw any declaration of interest that he may receive under subsection

(1) to the attention of the meeting of the Board prior to its consideration of the matter in respect of which the declaration was made.

(4) A Board member who fails to make a declaration of interest as required under subsection

(1) or who makes a false or misleading statement in such a declaration—

(a) commits an offence; and

(b) is liable to be removed as a Board member;

unless he proves that he was not aware of the interest or, as the case may be, that he did not know, or with the exercise of reasonable diligence could not have discovered, that the statement was false or misleading.

1.10 This Code is also designed to reflect the high standards of integrity expected of professionals.

1.11 An important object of the Code of Conduct is to assist those involved in decision-taking to identify for themselves conflicts of interest which may arise and to be aware of the appropriate action which may need to be taken to deal with them.

1.12 The primary responsibility for ensuring the proper handling of a conflict of interest lies with the individual with the conflict. This Code is designed to reinforce, rather than replace personal integrity.

- 1.13 Understanding of conflicts, and of ways of dealing with them is, however, only one element in effectively minimising and managing conflicts of interest. It is also intended that the Commission has in place, and operates, certain additional procedures for giving effect to the standards set by the Code. The Code is not an end in itself, but a means to more effective handling of conflicts.
- 1.14 The Commission therefore not only adopts this Code and its supporting procedures, but also commits to review their operation and effectiveness from time to time and to make any necessary adjustments.

2 What is a Conflict of Interest?

- 2.1 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 personal interest (including a business interest) or association of his/her own.
- 2.2 Not all of these will necessarily give rise to a significant conflict of interest in every case. This Code of Conduct applies to 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 individual's judgement or course of action might be affected** by the conflicting interest.
- 2.3 Conflicts of interest may arise in various ways, for example, as a result of:
- the individual's or his/her spouse's direct or indirect financial interest in the matter;
 - a direct or indirect financial interest held by a commercial undertaking with which the individual has connections;
 - a present or past business or personal association or relationship, whether of warmth or antipathy, with those affected or likely to be affected;
 - a responsibility, for example, as a trustee, to act in the interest of one or more other persons;
 - an expectation of a future interest (for example, future employment);
 - a previous association with the matter;
 - an interest arising from membership of a society or of a common interest grouping, such as a trade association, or professional or influencing group; or
 - sectional interests of a sector with which the individual is connected, for example, of the stockbroking or life assurance sectors.

3 Guiding Principle

- 3.1 Board Members should use the following as their guiding principle on the handling of conflicts¹;
 - 3.1.1 Board Members should not take part in any decision where they have a direct pecuniary interest;
 - 3.1.2 Board Members should also withdraw from any other case where there is any real danger of bias, in the sense that they might, or might be perceived to, unfairly regard or have unfairly regarded with favour or disfavour the case of the party to the issue under consideration by them.
- 3.2 Assessing the danger of “perceived bias” is left to individual Board Member to determine. However, where necessary, a Board Member should seek guidance as set out below.
- 3.3 If necessary, guidance from the Chairman (and the Deputy Chairman and/or other Board Members, 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.

4 Tackling Conflicts

- 4.1 In deciding how to deal with a conflict of interest, it is important to recognise that different conflicts can give rise to different problems.
- 4.2 The main risks are that:
 - the quality, and indeed validity, of regulatory decisions may be adversely affected;
 - the efficiency and speed of regulatory decision-taking may be impeded; or
 - regulatory information may be used for private or commercial gain, reducing the willingness of others to supply it.
- 4.3 In addressing these problems, three main principles should be followed.
 - 4.3.1 Individuals must 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 they may personally be subject does not affect the impartiality of regulatory action or create a risk that that action could be called into question.

¹ As set out in *Magill v Porter*; *Magill v Weeks* [2002] LGR (per Lord Hope)

4.3.2 The Commission's structure will be kept under review so that it can take proper regulatory decisions notwithstanding any conflicts of interest that may arise.

4.3.3 Individuals in possession of information received in connection with their regulatory functions must not misuse this information and must do all they can to ensure that it is used only for proper regulatory purposes.

5 Disclosing conflicts of interest

5.1 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.

5.2 Where a Board Member has any direct or indirect personal interest in the outcome of the deliberations of the Commission in relation to any matter:

- he/she 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/she shall withdraw from any deliberations of the Commission in relation to that matter and not vote upon it.

5.3 Sometimes, it will be desirable for potential conflicts of interest to be covered in a general advance disclosure. This may be the case, for example, where decisions that 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 Board Member to be given access to information.

5.4 However, except where an individual'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.

5.5 There may, exceptionally, be a case in which it is acceptable for an individual 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 breach of the individual's duties (for example, duties of confidentiality relating to a proposed takeover). However, the individual in such a case should ensure that his non-involvement is clearly established.

6 Safeguards Following Disclosure

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

- 6.2 Accordingly, 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 take part in the decision-taking process. This will mean that he does not vote and takes no active part in discussions, for example, by contributing to them or chairing them. It may also mean that he is not physically present at them, for example, if his presence could inhibit free debate.
- 6.3 Likewise, where disclosure alone is insufficient and the problem concerns the use of information, it will generally be right for the individual concerned not to be given access to the information. This will mean excluding him from distribution of documents, or attendance at meetings, on the subject concerned.
- 6.4 In some cases, the application of these safeguards may have such a regular and significant impact on an individual's role that effective and prompt decision-taking means that he needs to stand down from a position he holds.
- 6.5 While it is recognised that there will not always be simple answers, it may help to give some illustrations of possible conflicts of interest and ways of dealing with them:
- the individual 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, but the Commission needs to remember that it is not responsible to practitioners alone;
 - the individual has a close link with an applicant for a waiver of any specific requirements, but without any direct financial interest, for example, because he has been a consultant to its dominant shareholder; he should not take part in the decision;
 - the individual has some form of financial interest in the grant of an application for a licence, 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 individual has a financial interest in an organisation whose business may be affected significantly by competition from a firm: depending on the closeness of the conflict, it may be right for him not to take part in a decision with regard to the firm or be present at the meeting;
 - the individual 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 individual should not impede the transfer of the information on the ground that it shows him (or his organisation) in a bad light; or

- the individual is aware that intervention action is about to be taken against a firm: he should not disclose that information to market practitioners to enable them to reduce their exposure to the firm, or use the information for such a purpose.

7 Personal Account Dealings by Board Members

- 7.1 Board Members are required so to manage their personal investment activity as to minimise the possibility of embarrassment to themselves or the Commission, and to that 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.
- 7.2 The Commission recognises that Board Members who are partners in, directors of, or employed by, firms regulated by the Commission will be subject to their firm's or employer's rules for personal account transactions. The Commission is confident that such Board Members will comply with those requirements and attaches the highest importance in their doing so.

8 What interests should be disclosed?

- 8.1 As a buttress to the guidance on conflicts of interests, Board Members are required to disclose to the Director certain interests, both financial and otherwise, which are relevant to the Commission's regulatory role, for entry into the Board Members' Register of Interests (the "**Register**").
- 8.2 Board Members are required to disclose the following, in respect of themselves, their spouse², their co-habitee³, or the Board Member's minor children:

Shares, interests in shares (eg, options) or interests of some other description (eg, partnership interests)	<ul style="list-style-type: none"> • in any company registered under the Anguilla Companies Law; • in any entity regulated by the Commission
Collective investment schemes	<ul style="list-style-type: none"> • in any scheme regulated by the Commission; • in any scheme managed by an entity regulated by the Commission

² Does not include a former spouse, or a spouse who is living separately and apart from the Board Member.

³ Means a person, whether or not of the opposite sex, living with the Board Member in a relationship similar to that of husband and wife.

Bonds	<ul style="list-style-type: none"> • issued by any company registered under the Anguilla Companies Law; • issued by any entity regulated by the Commission
Directorships (current or in the past three years)	<ul style="list-style-type: none"> • of any company registered under the Anguilla Companies Law; • of any company regulated by the Commission
Partnerships (current or in the past three years)	<ul style="list-style-type: none"> • in any partnership registered under the Anguilla Limited Partnerships or the Limited Liability Partnerships Laws;

8.3 On the basis of this information the Chairman, or in his/her absence the Deputy Chairman, and one of the other Board Members, will consider and, when they think it appropriate, draw to the attention of a Board Member the question of whether he/she should do or abstain from any act in pursuance of his/her duties.

9 What information about the interests should be disclosed?

Shares, interests in shares (eg, options), or interests of some other description (eg, partnership interests), collective investment schemes, or bonds	<ul style="list-style-type: none"> • the name of the company, partnership or entity should be disclosed to the Director. The number of shares, interests, or bonds - or the value thereof - need not be disclosed
Current directorships	<ul style="list-style-type: none"> • the name of the company and the date of appointment
Past directorships	<ul style="list-style-type: none"> • the name of the company and the date of resignation
Current partnerships	<ul style="list-style-type: none"> • the name of the partnership and the date of appointment
Past partnerships	<ul style="list-style-type: none"> • the name of the partnership and the date of resignation
Employment	<ul style="list-style-type: none"> • the name of the employer
Consultancy services	<ul style="list-style-type: none"> • the name of the organisation the services are provided to

10 Financial interests not held directly

10.1 The Register is designed to reflect those financial interests beneficially owned by a Board Member, his/her spouse⁴, his/her co-habitee⁵, or the Board Member's minor children.

10.2 Therefore financial interests held by:

- (1) a Board Member, his/her spouse or co-habitee, as the trustee of a trust in which the individual, his/her spouse or co-habitee, or minor child has a significant beneficial interest (other than a unit trust or a pension scheme); or
- (2) a body corporate over which the Board Member or his/her spouse or co-habitee have effective control, whether this is achieved by a majority interest or otherwise;

must be disclosed.

11 Type of information that does not need to be disclosed

11.1 Board Members would not ordinarily be expected to disclose the following:

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

11.2 Notwithstanding the above, there may be circumstances in which a Board Member may feel it prudent to declare an interest and withdraw from the relevant discussions. An example might be where the Commission is considering taking regulatory action against an entity of which the Board Member is a significant client/customer thereof.

⁴ Does not include a former spouse, or a spouse who is living separately and apart from the Board Member.

⁵ Means a person, whether or not of the opposite sex, living with the Board Member in a relationship similar to that of husband and wife.

- 11.3 Where a Board Member, his/her spouse or co-habitee, is a partner in, director of, employed by or in any other way interested in a firm or company the business of which includes the administration of, or provision of services for, companies ("**Companies under Administration**") then the reporting requirements shall not extend to directorships of any of the Companies under Administration by that firm or company. The interest of the Board Member, their spouse or co-habitee, in the firm or company carrying on such business must be disclosed and he/she will be regarded as having a conflict of interest in any matter affecting any company, trust or matter administered by that business.
- 11.4 These disclosure requirements are not designed to cover a Board Member's dealings relating to funds (other than his/her own or those of his/her spouses, co-habitees, or minor children), which he/she manages, advises on or influences, whether professionally or otherwise. Board Members clearly must eschew any use of privileged information in such cases. They should be ready in appropriate cases to remain silent even where this may be to the detriment of those whose interests they are in other circumstances bound to promote. If a Board Member feels that a particular holding or transaction may, nevertheless, expose him/her to any real or apparent conflict of interest, he/she should exceptionally disclose it.
- 11.5 There will always be items that do not clearly fall into either of Sections 8 or 11. Where a Board Member is unsure as to whether or not a particular item needs to be entered in the Register, the Board Member should use his/her discretion but, in doing so, should apply the guiding principle set out in Section 3.

12 Investments under discretionary management

- 12.1 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.
- 12.2 There may be occasions where a Board Member becomes aware of the existence of a holding in an entity regulated by the Commission (or a holding in such an entity's parent, subsidiary, or other group company) even though it is held under discretionary management. Even though he/she may not be in a position to influence dealings to his own financial benefit, he/she should consider making a specific declaration of a potential conflict as soon as he/she becomes aware of the holding and possibly absenting himself from Commission consideration of any issue which might significantly affect the value of the holding concerned.

13 Access to the Register

- 13.1 Except with the agreement of the Board Member concerned, access to the information held in the Register will be confined to the Chairman, Deputy Chairman, other Board Members, and the Director.
- 13.2 On an annual basis, the Director will circulate a full copy of the Register to all Board Members for their information/updating as necessary.

14 Disclosure – Timing

- 14.1 Disclosure shall be made within five business days after the Board Member first becomes aware of the facts requiring such disclosure.

15 Prospective Board Members

- 15.1 Prospective Board Members should initially, upon consideration for appointment, disclose all such positions and interests as detailed in Section 8 above to the Chairman of the Commission, who, in conjunction with other Board Members as appropriate, will decide whether such appointments are acceptable for recommendation to HE the Governor. If not, the prospective Board Member may have to withdraw, but if agreement is reached, a written note of such agreement together with full details of the partnerships, directorships or offices held, must be disclosed and registered with the Director of the Commission.

16 Other disclosures

- 16.1 Board Members should immediately disclose to the Chairman or Deputy Chairman if any of the following circumstances arise, and they are within the reasonable knowledge of the Board Member:
- the Board Member becomes aware of an actual or potential conflict of interest between the Commission and himself, his firm or his employer, or a person with whom he is associated;
 - the Board Member becomes aware that he, his firm, or his employer is under investigation for a suspected breach of the Law, rules, principles or codes of conduct applicable to their professional conduct, or in the context of financial services, or for any offence involving personal dishonesty, or by Inspectors; or
 - the Board Member or his firm or employer is subject to discipline by the Commission or other supervisory or professional body, or is found guilty

of any offence which casts doubt on his financial propriety or personal honesty or integrity.

16.2 A note of all such disclosures shall be made and lodged with the Director of the Commission.

17 Temporary Standing Down

17.1 Whenever a material conflict of interest arises it shall be the duty of the Board Member concerned and of the Chairman or Deputy Chairman to ensure that the Board Member takes no part in deliberations and voting relating to that subject.

17.2 Whenever a Board Member becomes aware that he, his firm or his employer is under investigation for an offence involving personal dishonesty, or breach of rules or principles of any financial regulatory authority, it shall be the duty of the Board Member and of the Chairman or Deputy Chairman to ensure that the Board Member takes no part in decisions about discipline by the Commission.

18 Restriction on Disclosure of Information

18.1 Nothing in this statement shall amend or supersede the obligation of a Board Member to observe the Restrictions on Disclosure of Information contained within the Articles of all relevant legislation enacted currently or in the future.

19 Undertaking Regarding Confidentiality and Investment Dealing

19.1 All Board Members shall be required to sign the Undertaking Regarding Confidentiality and Investment Dealing, which is attached to, and forms part of, this statement.

20 Record Keeping

20.1 Records will be kept by the Director of all disclosures of conflicts of interest and the steps taken to handle them, as well as records of all disclosures of Board Members' interests.

21 Notes

21.1 These arrangements apply equally to all Board Members.

21.2 Unless the context otherwise requires, words importing the masculine gender shall include the masculine and feminine genders, and spouse includes common law partners.

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

**ANGUILLA FINANCIAL SERVICES COMMISSION ("THE COMMISSION")
UNDERTAKING REGARDING CONFIDENTIALITY
AND INVESTMENT DEALING**

Board Members are required to sign the following undertaking:-

I,

as a Board Member of the Anguilla Financial Services Commission and pursuant to the Commission's rules on confidentiality, hereby undertake and agree that:-

- a) I shall not, during or after the termination of my term of office, disclose to any person, or make any use of, information of a confidential nature relating to the Commission or any of its members or applicants for membership, their officers, employees or customers, otherwise than in the normal course of my duties as a member of the Commission unless the information in question is already in the public domain;
- b) I am aware of the criminal sanctions contained within various pieces of legislation concerning the Restriction on Disclosure of Information;
- c) I shall, upon termination of my appointment, deliver up to the Commission all documents, papers and other property belonging to the Commission or its Board Members, which may be in my possession or under my control and shall not retain any copies thereof;
- d) I shall not engage, directly or indirectly, in any business or transaction for personal benefit, which accrues as a result of confidential information gained as a result of my being a Board Member either during or after the termination of my term of office;
- e) I shall comply with such policy as the Commission may formally adopt from time to time with regard to relations with the press and the issue, verbally or in writing, of any public statements;
- f) I shall not have any direct or indirect financial interest or deal directly in any security or instrument falling within the scope of the Commission which conflicts or appears to conflict with my duties and responsibilities as a Board Member without giving prior notification of that interest or those dealings to the Director of the Commission;

- g) I shall not deal in any security using information which is confidential to the Commission or which might comprise confidential price sensitive information;
- h) I shall not accept any benefit, gift, reward or any item of material value, which is given in such frequency or in such circumstances or is of such value that would either be improper or create the impression of impropriety;
- i) I have read the rules governing dealings in securities by Board Members and agree to be bound by those provisions, and the spirit of those provisions, as they may be modified from time to time; and
- j) I have read the Board Members' Code of Conduct regarding Conflicts of Interest that apply to all Board Members and agree to abide by its terms.

Signed:

Date: