Conflicts Management Policy

2014
CONFLICTS MANAGEMENT POLICY

1. INTRODUCTION

LUCRF Super is a regulated industry superannuation fund operating under the Superannuation Industry (Supervision) Act and accordingly must have policies in place to identify, avoid and manage conflicts of duty and interest.

2. LEGISLATIVE REQUIREMENTS

Section 52(2)(d) of the Superannuation Industry (Supervision) Act (‘SIS’ Act) provides that where there is a conflict between the duties of the trustee to the beneficiaries, or the interests of the beneficiaries, and the duties of the trustee to any other person or the interests of the trustee or an associate of the trustee:

(i) to give priority to the duties to and interests of the beneficiaries over the duties to and interests of others persons
(ii) to ensure that the duties to the beneficiaries are met despite the conflict
(iii) to ensure that the interests of the beneficiaries are not adversely affected by the conflict, and
(iv) to comply with the prudential standards in relation to conflicts.

Section 52A(2)(d) of the SIS Act provides that where there is a conflict between the duties of the Director to the beneficiaries, or the interests of the beneficiaries, and the duties of the Director to any other person or the interests of the trustee or an associate of the trustee:

(i) to give priority to the duties to and interests of the beneficiaries over the duties to and interests of others persons
(ii) to ensure that the duties to the beneficiaries are met despite the conflict
(iii) to ensure that the interests of the beneficiaries are not adversely affected by the conflict, and
(iv) to comply with the prudential standards in relation to conflicts.

APRA has published Prudential Standard SPS 521 – Conflict of Interest. This standard identifies the requirements for the identification, avoidance and management of conflicts of duty and interest.

3. FRAMEWORK

The Trustee has developed a conflicts management framework and is responsible for the framework and has the ultimate responsibility for the framework. This framework consists of the structures, policies, processes and resources that are in place to identify, avoid and manage conflicts of duty and interest. The Board delegates certain responsibilities of the Conflicts Management Policy to the Company and Audit Committee. The Compliance and Audit Committee is responsible for the regular review of this Policy and the recommendation of any changes to the Trustee. All compliance breaches and any rectification actions are reported to the Committee.

With the management of LUCRF Super, the Chief Executive Officer has the overall responsibility for conflicts management. The Chief Compliance Officer is responsible for the day-to-day responsibilities of conflicts management.

4. POLICY

Against the background noted above, the Board has developed this Conflicts Management Policy reflecting the Trustee’s legal and regulatory obligations and their commitment to the interests of Fund members.
This Policy will apply to the RSE licensee, an associate of an RSE licensee and all ‘Responsible Officers’ of the Trustee. ‘Responsible Officers’ are defined in the Fit and Proper Policy. This Policy will also apply to all Trustee staff.

5. **DEFINITIONS**

The Prudential Standard provides the following definitions and this has been adopted in this Policy:

“**Relevant duty**” refers to any duty owed by the Trustee, or responsible officer to beneficiaries (within the RSE licensee’s business operations).

“**Relevant interest**” refers to any interest, gift, emolument or benefit, whether pecuniary or non-pecuniary, directly or indirectly held by the Trustee, the associate or the responsible person that the Trustee has deemed to be relevant.

It would be deemed to be relevant, if it has a significant impact on the capacity of the RSE licensee, associate or the responsible person to act in a manner that is consistent with the best interests of the beneficiaries. Factors such as frequency and timing of the benefits received will need to be considered to assist in the determination. For example, receiving significant hospitality during a tender process.

For the purposes of this Policy, relevance is dependent on the type of interest and has been set on a per annum basis. Limits have been set to assist to assess relevance; these limits are based on one-off events as well cumulative amounts arising from several events. The levels are as follows:

- For gifts: the level is set at $250 per person which is received from a current or potential service provider of the Trustee.
- For entertainment benefits, the level is set at $1,000 per service provider for each person and provided by a current or potential service provider of the Trustee.
- Where the person deal with a current service provider in a personal capacity, the materiality level is zero in which they receive terms and conditions more favourable than publicly available. For example, receiving a higher interest rate from an investment manager solely due to their position at LUCRF Super.
- For emolument, the level is set at zero where the person holds a Directorship position with a current or potential service provider or competitor.

In the case of educational or research programs, the level will be determined on a case-to-case basis and will be reported to the Management Committee for consideration and approval.

The levels have been approved by the Board having regard to the nature and size of our business operations. These levels will be reviewed on an annual basis to ensure that the levels remain appropriate. If the Trustee or Responsible Officer exceeds these limits, it does not automatically deem their capacity to act in a manner that is consistent with the interests of beneficiaries to be significantly impacted.

Refer to the Gifts and Hospitality Policy for the Trustee’s Policy on receiving of gifts and hospitality by Directors and staff, including the required authorisation requirements.

6. **CONFLICT SITUATIONS**

A conflict arises in circumstances where a person has a relevant duty or relevant interest that exists independently of his or her role at LUCRF Super and that relevant duty or relevant interest has the potential to, or might reasonably appear to, influence the person in the independent performance of his or her functions and duties.

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1 Refer to Section 15 for the approved action obligations
A circumstance, position, information or interest that might reasonably be regarded as influencing a person’s capacity to act wholly in the interests of the company in its capacity will constitute a conflict.

For example, an actual conflict would be the solicitation of gifts of benefits in relation to the performance of their duties. This is strictly forbidden. Likewise, the acceptance of monetary gifts, such as cash or cheque is not allowed.

An example of a potential conflict would be the involvement of a responsible officer who is a Director of an external company. That person should not be present when that matter is discussed.

The obligation to avoid conflict is absolute and acting honestly and in good faith is not a defence to a claim of a breach of the obligation. Equally, the conflict arises even if the fiduciary does not put their personal interest or other duty ahead of their duty as Responsible Officer.

7. **FUND MEMBERSHIP PERMISSIBLE**

Membership of the Fund itself (or association with an employer contributor) does not constitute an impermissible conflict of interest. This is clear from the scheme of the SIS legislation requiring equal representation and from clause 4 (l) of the Trust Deed. That clause expressly permits participation as a Trustee Director in exercising the Trustee’s powers notwithstanding membership by a Director of the Fund. Of course the exercise of a power specifically related to a Director (e.g. a TPD claim) would involve a conflict.

8. **UNION/EMPLOYER ASSOCIATION PERMISSIBLE**

Just as membership of the fund does not constitute an impermissible conflict of interest nor does being an officer or senior employee of the Union or of an employer. The SIS Act and the Trust Deed respectively provide for equal representation and Union appointment of member Directors. The Union is entitled to appoint persons including its officers as the appropriate member representatives. Equally, employer representatives appropriately include senior employees of organisations having their own particular views and policy objectives.

9. **DISCLOSURE - COMPANY**

Disclosure of a conflict is the starting point for addressing a conflict. In a commercial context disclosure may itself be sufficient to meet the conflict. (See Article 80 of the LUCRF Pty Ltd Articles [now replaced by rule 1 of the Constitution] which provides that subject to disclosure of an interest a Director may nonetheless participate).

However, in the absence of express provision such as Article 80, in the event of a conflict, disclosure and non-participation in the decision making process relating to the issue in question is necessary.

10. **DISCLOSURE – TRUSTEE DIRECTORS**

The position on disclosure in respect of Trustees and Trustee Directors is different to that arising in ordinary commercial matters. Disclosure alone on the part of Trustee Directors is not adequate. In the event of a conflict of interest or duty in respect of the Fund and its members, a Trustee Director must disclose the interest or duty immediately it is identified and not participate in the decision making process concerning the matter.

11. **CONFLICT PROCESS**

Against the background and obligations to give priority to the duties, and interests of beneficiaries, in circumstances where a conflict of interest arises, the Board will adopt a process involving the elements of:

a) Disclosure

b) Transparency
c) Objective Assessment, and
d) Non-participation.

Disclosure requires the person to identify and disclose any relevant conflicts prior to appointment and are required to ensure any changes to interests are notified to the Chief Compliance Officer.

At the beginning of each Board or Committee meeting, the Chair will ask Directors to disclose any potential conflict of interest that may arise during the meeting.

Transparency requires that disclosure be recorded and minutes made, as must be the processes adopted to address conflicts if, and when they arise.

Objective Assessment demands that when a conflict is identified, particular care is taken in the decision making process of remaining Trustee Directors who recognise that they must properly carry out their fiduciary duty and exercise professional judgement.

Non-participation requires that the person not participate in decision-making that concerns the subject matter of a conflict. The person must leave the meeting for the duration of discussion and decision on that item of business.

Outsourced and Third Party Providers:
If a conflict arises with an outsourced provider or third party, and it cannot be resolved by LUCRF Super management, it must be reported to the Trustee. The Trustee must then determine how the conflict will be resolved and may take any of the following actions:

- require the external service provider to take rectification action to resolve the conflict
- obtain independent expert advice
- notify the regulator(s) of the conflict and the action taken/to be taken to resolve it
- document the details of the conflict including a summary of the trustee’s findings and action taken to resolve the conflict, and/or
- terminate the agreement with the service provider if appropriate (as outlined in the Fund’s outsourcing policy).

12. MAJORITY CONFLICT

In circumstances where a conflict cannot be avoided and sufficient Trustee Directors are conflicted so as to render the obtaining of the required two thirds majority of Directors impossible, the following approach will be adopted:

(a) the whole Board will identify the matter for decision and in respect of which a majority conflict exists
(b) the whole Board will, by resolution (satisfying the two thirds majority requirement), refer the matter identified for decision to:
   (i) a Sub-Committee of non-conflicted Directors
   (ii) an officer(s) or employee(s) of the Fund, or
   (iii) a Committee consisting of the non-conflicted Directors and such other persons as it may determine to decide.
(c) The Sub-Committee, person(s) or Committee, as the case may be, will determine the matter referred and advise the Board of its decision.

13. MINUTES

Minutes in respect of a conflict of interest and duty matters should be maintained so as to record:

(a) Directors’ declarations of a conflict of interest or duty whether general, such as relating to all transactions with a particular entity, or specific to a particular transaction or matter
(b) the absence from a meeting or part of a meeting of any Directors arising from a conflict
(c) the abstaining from voting by any Director on account of a conflict of interest or duty, and
(d) the details of the Conflict Process adopted, and each step of that process.

This applies to the Board, all Board Committees and other relevant meetings.
14. **ADVICE**
In the event of any doubt as to the question of whether or not a conflict exists on the part of a person, the Board will authorise the obtaining of appropriate advice on the question.

15. **APPROVED AUDITOR**
The Approved Auditor is required to report any conflicts or potential conflicts to the Trustee in the engagement letter provided to the provision of any audit service or whenever the approved auditor becomes aware of a conflict or a potential conflict.

The approved auditor provides an independence letter to the Compliance and Audit Committee and an annual declaration of independence for the financial statements.

16. **DECLARATIONS**
Upon appointment, Responsible Officers provide a declaration that they are not aware of any real or potential conflict of interest which may adversely affect them as acting as a Responsible Officer of the Trustee.

On an annual basis, all Responsible Officers make a declaration that they are not aware of any real or potential conflicts of interests which may adversely affect them acting as a Responsible Officer. Responsible Officers also declare that they will disclose any conflicts of interest which may arise in the future whilst they are a Responsible Officer.

16. **REGISTERS**
The Chief Compliance Officer will maintain the register of relevant interests and the register of relevant duties. To ensure it is kept up-to date, these registers will be tabled at each Board meeting.

17. **COMMUNICATION**
The Chief Compliance Officer will provide training to relevant staff on the conflict management framework.

18. **REVIEW**
On a triennial basis, a comprehensive review of the conflicts management framework will be undertaken by an operationally independent, competent and appropriately trained person. This review will comply with the requirements of Prudential Standard SPS 521. The review at minimum will include:

- whether all relevant duties and all relevant interests have been identified and are being addressed in accordance with the RSE licensee's conflicts management framework,
- the level of compliance with the Conflicts Management Policy, including reporting on the registers of relevant duties and relevant interests, and
- any non-compliance with the Conflicts Management Policy, including steps taken to return to, and improve, ongoing compliance.

On each year that a comprehensive review does not take place, a review of the conflicts management framework will take place and the results reported to the Board.