



BERMUDA  
**REGULATORY  
AUTHORITY**

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**Consultation:  
Administrative Rules**

Consultation Document  
Matter: C13/409  
Date: 12<sup>th</sup> July 2013  
Responses Due: 26<sup>th</sup> July 2013

## **Introduction:**

It is essential that the Regulatory Authority (the "RA") should establish and maintain a reputation for impartiality, integrity and high professional standards. The RA had on 4<sup>th</sup> February 2013 published the document "Draft Conflict of Interest and Gifts and Hospitality Policy" on its website [www.rab.bm](http://www.rab.bm). The document is here being attached for ease of reference.

In order to keep on improving the way the RA conducts its business, it is inviting comments on its Administrative Rules.

Responses to this consultation should be filed electronically in MS Words or Adobe Acrobat format. Parties filing comments should go to the Regulatory Authority's website [www.rab.bm](http://www.rab.bm) and follow the link to the Consultations and Responses page and click the "Click here to submit responses" icon which appears at the top of the page. All comments should be clearly marked "Responses to Consultation Document C13/409: Consultation on Administrative Rules."

The Chief Executive Officer is the principal point of contact at the Regulatory Authority for interested persons during this consultation. He may be contacted by email at [pmicallef@rab.bm](mailto:pmicallef@rab.bm) or by mail to:

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Responses should be due by close of business **Friday, 26<sup>th</sup> July 2013**.

# Regulatory Authority

## Draft Conflict of Interest and Gifts and Hospitality Policy

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Version 1

4<sup>th</sup> February 2013

## **1. Introduction:**

It is essential that the Regulatory Authority (RA) should establish and maintain a reputation for impartiality, integrity and high professional standards. The RA Commissioners and staff 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 Act, 2011 (the Act).

Commissioners and staff are required to conduct themselves in a professional manner which does not create a conflict of interest or the appearance of a conflict of interest. The conduct of RA Commissioners and staff is intended to provide the public and regulated entities with confidence that decisions are not influenced by extraneous interests. RA Commissioners and staff are strictly prohibited from profiting or benefiting from the use of information obtained in the course of their duties, or providing confidential information to third parties.

It is important that Commissioners and employees adhere to a standard conduct which ensures that staff of the RA is not put into a position where individuals' interests could be perceived to be in conflict with their official duties or could damage the RA's reputation. Commissioners and RA employees should be, and be seen to be, independent.

As stipulated under the Regulatory Authority Act, 2011 the following requirements are set out in law relating to Conflict of Interest and should be adhered to by all staff:

## **2. Regulatory Authority Act, 2011:**

### ***Conflict of interest***

31 (1) *A conflict of interest shall be deemed to exist in any case in which a Commissioner or member of the 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 the staff that has the conflict shall not participate in a decision-making or advisory capacity in the adjudication or public consultation unless he —*

- a) submits a written declaration to the Board that fully discloses the nature of the conflict; and*
- b) receives the unanimous approval of, the voting members of the Board; and*
- c) in the case of an adjudication, also receives 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 shall take all reasonable actions to ensure that no other member of the 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 the staff shall submit an annual written declaration to the Chief Executive 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 Authority, and the Chief Executive shall submit such a declaration to the Chairman.*

*(8) The Chairman or the Chief Executive, 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 the staff 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 Authority, unless the Authority 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 Commissioner or dismissal of a member of the staff.*

*(11) The Authority 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).*

### **3. Conflict of Interest Procedures:**

All new Commissioners and staff are to complete a conflict of interests disclosure declaration form, as shown in Appendix 1, at the start of their employment and annually thereafter.

In April each year the Chief Executive provides the conflict of interests disclosure declaration forms to each employee and Commissioner and it is their duty to complete these accurately and completely within 2 weeks and return it to the Chief Executive. When reporting interests, Commissioners and employees are duty bound to disclose all interests and relationships they may have. It is the responsibility of the Board to determine if an interest constitutes a conflict or the appearance of a conflict.

#### **Register of Interests**

The RA will maintain a register, to be held by the Chief Executive, detailing all employees and Commissioners, their reported interests and any decisions made by the Board in regard to risk mitigation.

In order to facilitate the complete and accurate reporting of interests, a list of sectoral providers and their principals (including members of the Board of Directors and executive management) will be developed by the Secretary and distributed with the conflict of interest forms.

The register of interests 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
- Prior to adjudication proceedings

Conflict declarations should form part of the standing agenda for each Board meeting and any known conflicts should be disclosed to the Chairman.

## **Reporting Changes in Interests**

Conflicts of interests 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,
- Commissioner's and staff's interests changing (e.g., a Commissioner may acquire shares in a regulated entity through an inheritance)
- The circumstances of family members<sup>1</sup> of Commissioners and staff may change (e.g., an employee's spouse may accept an executive level employment with a regulated entity)
- The principals of a sectoral provider may change

Conflicts should be monitored throughout the year to ensure that safeguards are still effective. Staff are responsible for ensuring that all conflicts are adequately disclosed.

Any newly arising conflicts in the year should be immediately brought to the attention of the Secretary or Chairman and subsequently the Board.

## **Adjudication or Public Consultation**

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

Where a conflict has been identified the Commissioner or employee 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 member of the Board that participation will not be in conflict.
3. In the case of adjudication obtain the approval of all parties involved in the proceedings.

Where these three steps have been followed the Commissioner or Employee may participate in an advisory or decision-making capacity at the adjudication or public consultation.

## **Risk Mitigation**

Not all interests constitute a conflict and the Commissioners must consider each interest and determine if risk mitigation is required. Where conflicts are noted the Commissioner or member of the staff that

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

has the conflict shall not participate in a decision-making or advisory capacity in the adjudication or public consultation unless they have been through the correct procedures as noted 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 Chief Executive. At the end of each financial year a search of the RA's ledgers will be carried out by supplier to ensure that no transactions have been carried out that have not be adequately disclosed in the financial statements as related party transactions.

Failure to adhere to the conflicts of interest policy may lead to disciplinary action up to dismissal.

### **4. Gifts and Hospitality Procedures:**

As per subsection 31 (9) of the Act no member of staff or Commissioner should accept any gift or gratuity where it might be perceived to be a breach of their independence. The following guidelines have been established by the RA as per subsection 31 (11) of the Act:

All gifts and hospitality received should be recorded by the Secretary on the gifts and hospitality register. The gifts and hospitality register should be regularly reviewed by the Board.

Gifts, including branded gifts, with a nominal value of below \$50 can be accepted without prior approval and must be noted on the register. Gifts above \$50 cannot be accepted and must be returned. These will be recorded on a separate register of returned gifts. Commissioners may receive hospitality with a value of no more than \$250. Commissioners must report hospitality received to the Secretary. The Chief Executive has discretion to approve hospitality (with a value of no more than \$250) that may be extended to employees. Pre-approval must be obtained before the employee can accept the hospitality.

Cash or near-cash<sup>2</sup> gifts may never be accepted by Commissioners, employees or immediate family members i.e. parent, spouse or children (when outside their usual scope of business) of Commissioner and employees, as this could be interpreted as Bribery.

Failure to adhere to this may lead to disciplinary action up to dismissal.

### **5. Related Policies**

The following policies and procedures should be read in conjunction with the conflict of interest policy and procedure:

Whistle blowing policy - see employee handbook.

Disciplinary policy - see employee handbook.

Governance Policy.

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

## **Appendix 1 - CONFLICTS OF INTEREST DISCLOSURE DECLARATION FORM**

### **CONFLICTS OF INTEREST DISCLOSURE DECLARATION**

I, \_\_\_\_\_, have read the conflicts of interest policy and in line with my statutory duties have completed this form accurately.

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

- a) I have reviewed the list of sectoral providers, their principals and counter parties as provided by the Secretary for the purpose of identifying all business, professional or personal interests and relationships between myself as an individual and any of the sectoral providers, their principals or employees, "Identified Potential Conflicts", including the following relationships:
  - i. family; "family relationships" are listed below in section 1, "; or
  - ii. business or professional relationships (includes negotiations or arrangements concerning future employment or contracts with an Identified Potential Conflict; a former long term employment or contractual relationship with an Identified Potential Conflict; an ownership in an Identified Potential Conflict; on-going or successive contractual relationships, contractual or legal disputes with an Identified Potential Conflict) These should be disclosed in Section 2.
- b) I have disclosed all shareholdings and directorships that I hold including:
  - i. shareholdings are listed below in Section 3. These include all shareholdings held so that where these are significant i.e. decisions taken by the RA could influence the share price or where the holder has a controlling interest in the Company sufficient mitigating actions are taken.
  - ii. other Directorships are listed below in Section 4. These include positions held on charitable entity Boards as well as commercial Boards.
- 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 have a personal, professional, or business, relationship or interest, with any Identified Potential Conflict, or any Member of an Identified Potential Conflict, as set out below (and in the attached additional pages and documents – additional pages and documents are attached if necessary) that could constitute a conflict of interest.



**Section 1. Listing of Family:**

Relation	Name(s)
Spouse:	
Children:	
Step Children:	
Mother:	
Father:	

**A. NO RELATIONSHIP EXISTS with any Identified Persons or Members of an Identified Potential Conflict that could constitute a conflict of interest or unfair advantage: ☐**

**OR**

**B. RELATIONSHIPS EXIST with the following Identified Persons or Members of an Identified Potential Conflict that could constitute a conflict of interest, as indicated below:**

**Section 2:**

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

	Name of Company or Identified Person	Description of Relationship with Individual or Firm
	Companies	
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		

	<b>Name of Company or Identified Person</b>	<b>Description of Relationship with Individual or Firm</b>
22.		
23.		
24.		
25.		
26.		
27.		
28.		

### **Section 3. SHAREHOLDINGS**

Please list all shares held, by yourself and your family members as noted above, and note whether these constitute a greater than 25% stake in the business.

<b>Individual holding shares</b>	<b>Company shares held in</b>	<b>Do shares constitute greater than 25% ownership</b>

### **Section 4. OTHER DIRECTORSHIPS HELD**

Please list all directorships you hold or have held for the past two years, including dates held in a company or other organization. Please include all directorships, shadow directorships, alternate directorships, trustee or partner positions.

<b>Entity in which directorship held</b>	<b>Dates held</b>

2. If, after the date of this Conflict of Interest Disclosure Declaration, I become aware of any personal, professional, or business relationship or interest with any of the Identified Potential Conflict, either company or persons that could constitute a conflict or interest or unfair advantage, then I will make full, true, and plain disclosure in writing to the Company Secretary.
3. I irrevocably and unconditionally agree that a facsimile or scanned or PDF file type (Adobe Acrobat Portable Document Format) form of 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\_\_**

\_\_\_\_\_  
**Name (please print)**

\_\_\_\_\_  
**Signature**