

Policy 10 – Related party and conflicts of interest

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**1 Introduction**

KM Property Funds Limited (KMPF) holds an Australian Financial Services License (No. 442806).

KMPF believes that ethical and responsible decision-making is critical to the success of its business. It also believes that the transparency of these processes promotes market and Unit Holder confidence in KMPF's integrity and sustainability. The Board has in place a Related Party and Conflicts of Interest Policy for the disclosure and resolution of any matter that may give rise to actual, potential or perceived conflicts of interest between the interests of a director and those of KMPF or a KMPF fund. For transactions involving related parties of KMPF, the policy requires that all related party transactions (except transactions involving unregistered scheme funds) conform to the requirements of both the Corporations Act 2001 (Chapter 2E as modified by Part 5C.7) and the Related Party and Conflict of Interest Policy.

2 Overview

KMPF specialise in the investment management of direct property. KMPF recognises the importance of identifying and managing conflicts of interest that may arise from time to time within its operations. Having an adequate strategy for managing conflicts of interest is necessary to ensure that KMPF complies with its legal obligations, and that the quality of its financial services is not compromised or diminished by conflicts of interest.

3 What are conflicts of interest, what do they mean to KMPF?

Conflicts of interest are circumstances where some or all of the interests of people (unit holders) to whom a licensee (or its representatives) provides financial services are inconsistent with, or diverge from, some or all of the interests of the licensee or its representatives. It includes actual, apparent and potential conflicts of interest.

For KMPF, conflicts of interest can arise in a number of facets of its business. They can relate to the costs that are charged to investors, or dealings with others including related parties. Conflicts can arise between the interests of KMPF corporate entities, shareholders, individual directors or employees and unit holders in KMPF funds.

4 What does the law require in relation to conflicts of interest?

The existence of a conflict of interest in relation to KMPF's activities does not necessarily mean that the particular activity may not occur. While in some instances the only way in which a conflict can be managed appropriately is for the circumstances giving rise to it to be avoided completely, in other situations it will be possible to manage the conflict in such a way that the interests of all parties can be appropriately addressed.

The Corporations Act contains specific legal requirements in relation to the management of conflicts of interest that arise for those companies that hold Australian Financial Services Licences (AFSL). Section 5 of this policy sets out the process for management of conflicts of interest, including for the purposes of satisfying AFSL obligations.

The Corporations Act contains specific legal requirements in relation to related party transactions. Section 6 of this policy sets out the requirements in relation to and management procedures for, dealing with related party transactions.

5 Managing Conflicts of Interest as the holder of an AFSL

The Corporations Act 2001 requires all licensees of financial services in Australia to have *"...adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a*

representative of the licensee in the provision of financial services by the licensee ... as part of the financial services business of the licensee." (See section 912A(1)(aa) of the Corporations Act)

Other licensee obligations also deal with or relate to conduct potentially affected by conflicts of interest, including:

- The obligation to do all things necessary to ensure that their financial services are provided efficiently, honestly and fairly (s912A(1)(a)).
- The obligation to have adequate risk management systems (s912A(1)(h)).
- The obligation to comply with financial services laws and to take reasonable steps to ensure their representatives do likewise (s912A(1)(c) and (ca)).
- The obligation to have adequate compliance arrangements (reg 7.6.03(g) and Pro Forma (PF 209)).
- The licensee's (and their authorised representatives') obligation to disclose benefits and relationships in a Financial Services Guide (FSG) before providing financial services to retail clients (s941A and 941B).
- A range of prohibitions, including those for misleading or deceptive conduct in the provision of financial services, dishonest conduct, unconscionable conduct and insider trading, and
- The duties of the responsible entity of a registered managed investment scheme, including duties to act in the best interests of the members of the scheme and, if there is a conflict between the members' interests and its own interests, to give priority to the members' interests (s601FC).

5.1 Conflicts management process

Identification

Directors and staff are responsible for identifying conflicts, whether actual or potential, that arise in his/her course of business and employment. Each staff member must notify the Compliance Manager, or in his or her absence the Chairman or Board, of such actual, apparent or potential conflicts.

Evaluation and treatment

The Register of Conflicts of Interest records all instances in which an actual, apparent or potential conflict, has been reported to or by someone within KMPF and how KMPF manages conflicts. Conflicts are classified for treatment according to whether they are avoided, disclosed or controlled. Conflicts are evaluated by the Compliance Manager and when required, the Legal Counsel, who will determine the treatment of such conflicts.

The Compliance Manager is responsible for the implementation of conflicts treatment, including action plans for improvements. Action plans will set out resource requirements, budget impacts and implementation timetables. The action plans will also nominate what monitoring and review processes are required, as these will be tailored to the relevant conflict.

Review, reporting and responsibilities

- The Executive Directors (with the assistance of the Compliance Manager) are responsible for embedding conflicts management into the business operations and implementing the policy and treatment plans.
- All conflicts and treatment of conflicts are to be reported to the Compliance Manager who will ensure the conflict is registered in the Register of Conflicts of Interest. This register is managed by the Compliance Manager. The Compliance Manager will advise Responsible Managers and the Board on the identification and treatment of conflicts. The Compliance Manager may seek external legal advice in relation to the identification and/or treatment of conflicts.
- The Compliance Manager will continuously monitor the conflicts management arrangements and will report to the Board at its meetings.
- Conflicts are to be reassessed where there is a material change in the conflict or control environment, such as organisational restructure.
- At least annually, the Compliance Manager will assess the adequacy of the processes to identify and manage potential, apparent and actual conflicts of interest. Where appropriate, the Related Party Transactions and Conflicts of Interest Policy will be updated to reflect current practices for review by Legal Counsel. All changes to be approved by the Board.
- Conflict assessment, oversight and review is included as part of the cyclical risk management process which is part of the responsibility of the Board.

- Conflicts management is included as an agenda item for each Board meeting, at which time it will consider recommendations from the Compliance Manager. The Board shall monitor the effectiveness of the policy and processes at least on an annual basis.

KMPF has adopted the following 3-point system for managing conflicts:

- controlling conflicts of interest
- avoiding conflicts of interest, and
- disclosing conflicts of interest.

Simply disclosing conflicts of interest is often not sufficient – it is imperative that all conflicts including potential conflicts, are identified, controlled and, where possible, avoided, before disclosure even becomes an issue.

5.2 Controlling conflicts of interest

The strategy for controlling conflicts of interest involves:

- a. identifying the conflicts specific to KMPF
- b. assessing and evaluating those conflicts, and
- c. formulating and implementing an appropriate response to the conflicts.

It is important for directors and staff of KMPF to be aware of the potential for conflicts, and to recognise particular individual conflicts as they arise. Identification of conflicts is not always easy. Some conflicts may arise when people are performing multiple roles (for example, acting on behalf of KMPF as a corporate entity or a fund), and this policy will obviously apply.

Other conflicts are less obvious. Conflicts may be actual or perceived, and there may be circumstances where, even if a matter is not actually a conflict, it may give rise to a perception of a conflict that still requires appropriate management.

All staff involved in any area of KMPF's business should immediately raise every matter that they think is, or might potentially be, a conflict, with the Compliance Manager and the Executive Directors in the first instance. Where necessary, external advice will be sought to help determine whether a matter is a conflict where required.

5.3 Avoiding conflicts of interest

There are some circumstances in which it is not possible for a conflict to be appropriately managed to ensure that the interests of all parties are addressed appropriately, and the quality and integrity of KMPF's business is not impinged. In these circumstances, the conflict must be avoided.

A decision to avoid a conflict in this way will be made by Executive Directors in consultation with the Compliance Manager and Legal Counsel after:

- i. a full review of the circumstances,
- ii. external legal or other advice on the matter,
- iii. the potential consequences of both continuing and discontinuing the matter and
- iv. the options available for management of the conflict.

Depending on the circumstances, conflicts may be avoided by:

- allocating another person or director to provide the service or to perform the task
- declining to provide a product or service
- preventing the dissemination of sensitive information
- implementing a code of conduct which clearly states prohibited behaviour, and
- providing training and coaching to ensure that KMPF personnel understand what is prohibited behaviour.

5.4 Disclosing conflicts of interest

While disclosure alone is often not a sufficient way to manage conflicts of interest, it does form an integral part of managing the process. 'Disclosure', in this sense, means providing enough detail in a clear, concise and effective form to allow investors

to make an informed decision about how the conflict may affect the service being provided to them. Disclosure of conflicts is another way in which KMPF aims to provide clarity and transparency in all of its dealings.

KMPF has put in place monitoring procedures to ensure that any non-compliance with the licensee's conflicts management arrangements are identified and appropriately acted upon. All breaches of this obligation will be recorded in the Breach Register.

Where a conflict (not being a conflict to be avoided) is identified, and it is decided that disclosure is the most appropriate course of action that disclosure should:

- a. be timely, prominent, specific and meaningful
- b. occur before or when the relevant event affected by the conflict is to occur, but in any case, at a time that allows the recipient of the disclosure reasonable time to assess the effect of the conflict, and
- c. refer to the event to which the conflict relates.

Conflict management arrangements could include measures such as:

- meetings with affected staff or clients
- periodic review of business operations by an internal or external auditor or other person independent from the business unit
- periodic review of client files and records of services provided
- staff training
- segregation of duties
- Disclosure should refer to the specific service to which it relates and should be specific and clear enough for the client to understand the conflict and its potential impact on the services they are being offered. The level of details of disclosure will depend on:
 - the level of financial sophistication of the client
 - the extent to which third persons are likely to rely, directly or indirectly, on the service
 - how much the client already actually knows about the specific conflict, and
 - the complexity of the service.

6 Related party transactions

6.1 Conflicts of interest arising from related party transactions

Where a transaction or matter concerns related parties, it can be hard to ensure that the interests of all parties are considered objectively and fairly, and that regard is to be had to the interests of underlying parties.

For this reason, the Corporations Act (Chapter 2E as modified by Part 5C.7) contain detailed provisions in relation to 'related party' transactions'. In addition, ASIC Regulatory Guide 76 set's out ASIC guidance on how to apply these provisions. These provisions and guidance are applicable to registered schemes only.

KMPF is committed to ensuring that it has a culture of openness and transparency in all of its dealings (including unregistered schemes), and that all staff understand their obligations when it comes to related party dealings. Hence, section 6.5 – Procedure for dealing with related party transactions will also be applicable for unregistered schemes.

6.2 What is a related party?

There are various types and permutations of related parties under the Corporations Act (Section 228).

Essentially:

- a. An entity that controls a public company is a related party of that company. For example, this means that KM Custodians Pty Ltd (which is the sole owner of the Responsible Entity and the Manager) is a related party of KM Property Funds.
- b. The following are related parties of a public company:
 - i. directors

- ii. directors of any entity that controls the public company
- iii. spouses and de facto spouses of the persons in (i) and (ii), and
- iv. the parents and children of the persons in (i), (ii) and (iii).

An entity controlled by a related party referred to in a. or b. above is also a related party of the public company. For example, this means that KordaMentha Pty Ltd (which KMPF has a Shared Services Agreement with) is a related party of KM Property Funds.

At a particular time, an entity may also be a related party of a public company if that entity:

- a. was a related party of the company at any time within the previous six months
- b. believes or has reasonable grounds to believe that it is likely to become a related party of the company at any time in the future, or
- c. acts in concert with a related party of the public company on the understanding that the related party will receive a financial benefit if the public company gives the entity a financial benefit.

Importantly, the related party transaction provisions also apply to KMPF as responsible entity of its registered schemes. they apply where:

- a. the benefit is given by:
 - v. the responsible entity of a registered scheme, or
 - vi. an entity that the responsible entity controls, or
 - vii. an agent of, or person engaged by, the responsible entity.
- b. the benefit either:
 - i. is given out of the scheme property, or
 - ii. could endanger the scheme property.
- c. the benefit is given to:
 - i. the person or a related party, or
 - ii. another person referred to in paragraph (a) or a related party of that person.

For example, a benefit provided by one KMPF scheme to another will be caught. Similarly, a benefit (such as an advisory fee) paid by a KMPF scheme to a related party of KMPF will also be caught.

6.3 What is a financial benefit?

In determining what constitutes a financial benefit, consideration must be had to:

- a. the benefits being given, even if civil or criminal penalties may be involved, and
- b. the economic and commercial substance of the conduct giving rise to the transaction.

The following are examples of giving a financial benefit to a related party:

- giving or providing finance or property to the related party
- buying an asset from, or selling an asset to, the related party
- leasing an asset to or from the related party
- supplying services to, or receiving services from, the related party
- issuing securities or granting an option to the related party, and
- taking up or releasing an obligation of the related party.

6.4 Approval of benefits and relevant exemptions

Subject to relevant exemptions, the giving of financial benefit to a related party by a public company, or an entity that the public company controls, or by the responsible entity of a registered scheme, or an entity that the responsible entity controls to a related party, member approval must be obtained in accordance with the Corporations Act, and the benefit must be given within 15 months after the approval.

Certain exemptions from the requirement to seek member approval are set out in the Corporations Act:

- a. The key exemption (s210) is where the relevant benefit is on 'arm's length terms, that is the terms:
 - i. would be reasonable in the circumstances if the public company or entity and the related party were dealing at arm's length, or
 - ii. are less favourable to the related party than the terms referred to in paragraph i.
- b. Reasonable remuneration and reimbursements to officers or employees (s211).
- c. Indemnities, insurance premiums and legal costs for officers (s212).
- d. Small amounts given to related parties (section 213) (this exemption does not apply in the registered scheme context).
- e. Benefit given to a closely held subsidiary (s214) (this exemption does not apply in the registered scheme context).
- f. benefits that do not discriminate unfairly (s215).

6.5 Procedure for dealing with related party transactions

If a KMPF entity proposes to enter into a transaction which may be a 'related party transaction' the following procedure applies:

- a. The manager or executive proposing the transaction must:
 - i. Discuss the matter in detail with the Legal Counsel, Compliance Manager and an Executive Director.
 - ii. Obtain legal and other advice as necessary on the requirements for proper management of the matter, and
 - iii. For registered schemes prepare a detailed report on the proposed transactions for the Board, including the reasons for it, advantages and disadvantages for all affected parties, financial analysis, recommendations for appropriate management of conflicts of interest and recommendations for compliance with legal requirements.
- b. The Board will then consider the information provided in order to determine whether and how to proceed with the proposed transaction, taking into account of all relevant legal and other advice.
- c. If the Board determines that the proposed transaction may be carried out without reference to the related party requirements of the Corporations Act, it may be conducted in the normal manner (including having regard to requirements in relation to the management of conflicts of interest as set out in this policy).
- d. If the Board determines that the proposed transaction is to proceed, but for registered schemes requires compliance with the Corporations Act, the Legal Counsel and the Compliance Manager will be responsible for ensuring that all relevant requirements are met. This may include calling a meeting of members to approve the related party transaction in accordance with all applicable laws, rules and the constitution of the relevant entity/scheme.

7 How this policy is managed and maintained

The Compliance Manager will, on an annual basis, review this Policy and for any material changes, consult with the Legal Counsel. Any deficiencies or improvements in the policy will be prepared by the Compliance Manager and given to the Board for approval and implementation. Training on the policy is provided to staff on commencement of employment and on an ad hoc basis.

The Compliance Manager will also be responsible for random audits to ensure adherence to this Policy. Any instances of non-compliance will be referred to the Board for sanction.

KMPF will retain for at least seven years, records of:

- a. conflicts identified and action taken
- b. any reports given to KMPF's shareholders, directors or senior management about conflict of interest matters, and
- c. copies of written conflict of interest disclosures given to clients or the general public.