



# SCORPION LEGAL PROTECTION CONFLICT OF INTEREST MNGT. POLICY

**Effective date:** 31/01/2011

## **Purpose:**

The purpose of this policy is to address the avoidance or possible mitigation of any conflict of interest between a provider and a client or a representative of the provider and a client i.e. the giving and receiving of direct and or indirect benefits between employees, clients and suppliers which may result in a conflict of interest.

## **Scope:**

This policy applies to all employees, permanent, temporary, contracted, independent contractors or agents of Scorpion.

## Conflict of Interest Management Policy

### 1. Introduction

Under the Financial Advisory and Intermediary Services Act, 2002 (FAIS act no. 37 of 2002), a General Code of Conduct for Authorised Financial Services Providers and representatives was published by the Financial Services Board under Board Notice 80 of 2003, as amended by Notice 43 of 2008.

Subsequent to the above, Board Notice 58 of 2010 was published by the FSB. This notice amends the earlier notice and effectively introduces a Conflict of Interest (COI) Management policy which must be implemented by all Financial Services Providers by the 19 April 2011. In terms of Board Notice 58, every provider, other than a representative, must adopt, maintain and implement a conflict of interest management policy that complies with the provisions of the FAIS Act. This policy aims to address the avoidance or possible mitigation of any conflict of interest between a provider and a client or a representative of the provider and a client i.e. the giving and receiving of direct and or indirect benefits between employees, clients and suppliers which may result in a conflict of interest. It is not possible to list all situations which could constitute a COI and the facts & merits of each case will determine whether the interest in question is such as to bring it within the area of potential conflict. This policy is also to be read in conjunction with all other policies and procedures, already implemented by Scorpion Legal Protection (Pty) Ltd (hereinafter referred to as Scorpion) and applies to all employees.

Determining whether a conflict of interest situation occurs, we need to ascertain whether a Scorpion representative, associate or employee –

- Is likely to make a financial gain, or avoid a financial loss, at the expense of a client or supplier;
- Has an interest in the outcome of a service provided to or by a client or supplier
- Has a financial or other incentive to favour the interests of one client or supplier over the interests of another client or supplier;
- Receives or will receive from a person other than the client or supplier, an inducement in relation to a service provided to or by the client or supplier in the form of monies, goods or services, other than the legislated commission or reasonable fee for that service.

A conflict of interest as per Board Notice 58 is defined as follows:

**“conflict of interest”** means any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client,

- (a) influence the objective performance of his, her or its obligations to that client; or
- (b) prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client, including, but not limited to –
  - (i) a financial interest;
  - (ii) an ownership interest;
  - (iii) any relationship with a third party

## **2. Definitions**

### **2.1 “associates” –**

- (a) in relation to a natural person, means –
- i. a person who is recognised in law or the tenets of religion as the spouse, life partner or civil union partner of that person;
  - ii. a child of that person, including a stepchild, adopted child and a child born out of wedlock;
  - iii. a parent or stepparent of that person;
  - iv. a person in respect of which that person is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the daily care needs of the first mentioned person;
  - v. a person who is the spouse, life partner or civil union partner of a person referred to in subparagraphs (b) to (d);
  - vi. a person who is in a commercial partnership with that person;
- (b) in relation to a juristic person –
- i. which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
  - ii. which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;
  - iii. which is not a company or a close corporation as referred to in subparagraphs (a) or (b), means another juristic person which would have been a subsidiary or holding company of the first-mentioned juristic person –
    - i. had such first-mentioned juristic person been a company; or
    - ii. in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;
  - iv. means any person in accordance with whose directions or instructions the board of directors of or, in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act;
- (c) in relation to any person –
- i. means any juristic person of which the board of directors or, in the case where such juristic person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the person first-mentioned in this paragraph;
  - ii. includes any trust controlled or administered by that person.

### **2.2 “distribution channel” means –**

- i. any arrangement between a product supplier or any of its associates and one or more providers or any of its associates in terms of which arrangement any support or service is provided to the provider or providers in rendering a financial service to a client;
- ii. any arrangement between two or more providers or any of their associates, which arrangement facilitates, supports or enhances a relationship between the provider or providers and a product supplier;
- iii. any arrangement between two or more product suppliers or any of their associates, which arrangement facilitates, supports or enhances a relationship between a provider or providers and a product supplier;

- 2.3 “**fair value**” has the meaning assigned to it in the financial reporting standards, adopted or issued under the Companies Act, 1973 (Act No. 61 of 1973);
- 2.4 “**financial interest**” means any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration, other than –
- (a) an ownership interest
  - (b) training, that is not exclusively available to a selected group of providers or representatives, on –
    - i. products and legal matters relating to those products;
    - ii. general financial and industry information;
    - iii. specialised technological systems of a third party necessary for the rendering of a financial service; but excluding travel and accommodation associated with that training;
- 2.5 “**immaterial financial interest**” means any financial interest with a determinable monetary value, the aggregate of which does not exceed R1000 in any calendar year from the same third party in that calendar year received by –
- (a) a provider who is a sole proprietor; or
  - (b) a representative for that representative’s direct benefit;
  - (c) a provider, who for its benefit or that of some or all of its representatives, aggregates the immaterial financial interest paid to its representatives;
- NB – Providers and their representatives are not allowed to spend or receive gifts (immaterial financial interests) in excess of R1000-00. These gifts include amongst others, meals, golf days, gifts, tickets (sports / entertainment), hunting trips etc. The limit is R1000 per representative in any calendar year.
- 2.6 “**ownership interest**” means –
- (a) any equity or proprietary interest, for which fair value was paid by the owner at the time of acquisition, other than equity or a proprietary interest held as an approved nominee on behalf of another person; and
  - (b) includes any dividend, profit share or similar benefit derived from that equity or ownership interest;
- 2.7 “**subsidiary**” means a subsidiary as defined in section 1 (3) of the Companies Act, 1973 (Act No. 61 of 1973);
- 2.8 “**holding company**” means a holding company as defined in section 1 (4) of the Companies Act, 1973 (Act No. 61 of 1973);
- 2.9 “**company**” means Scorpion Legal Protection (Pty) Ltd or a company under the Companies Act, 1973 (Act No. 61 of 1973)
- 2.10 “**third party**” means –
- (a) a product supplier;
  - (b) another provider;
  - (c) an associate of a product supplier or a provider;
  - (d) a distribution channel;

(e) any person who in terms of an agreement or arrangement with a person referred to in paragraphs (1) to (4) above provides a financial interest to a provider or its representatives

2.11 “**representative**” – means any person who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandatory agreement, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service –  
(a) does not require judgment on the part of the latter person; or  
(b) does not lead a client to any specific transaction in respect of a financial product in response to general enquiries

2.12 “**exco**” – means the executive committee of Scorpion Legal Protection (Pty) Ltd

2.13 “**FSP**” – means a Financial Services Provider authorized in terms of the Financial Services and Intermediary Act 2002.

2.14 “**the act**” – means the Financial Services and Intermediary Act 2002

### **3. Identification of Conflicts of interest**

Scorpion will conduct training on the COI policy to create awareness on identifying conflict of interest situations and the consequences thereof. Mechanisms employed are:

- a) Staff reporting – train & raise staff awareness and advise all employees that they are responsible for identifying instances of conflict of interest and are required to notify their immediate manager who will in turn bring it to the attention of senior management
- b) Implement COI and gift declaration forms & registers which will identify and record potential conflicts and controls to mitigate.

### **4. Disclosure of Conflicts of Interest**

- a) Disclosures must be made prior to the undertaking of any activity, at the beginning of any negotiations or at the beginning of any decision making process if a conflict of interest arises or may arise. A new disclosure must be made if the facts and circumstances relating to a previously disclosed interest or activity changes materially, thereby introducing a new undisclosed interest. All disclosures must be made annually including pre existing conflict of interests. Any personal interest which an employee or his/her associate has in relation to the company’s business must be disclosed.
- b) Employees / representatives – all employees must disclose any conflict of interest that could impair or be perceived to impair his/her ability to act with integrity or objectivity in his/her role at the company.
- c) Directors – any conflict of interest in business dealings, transactions, outside business interests and outside Directorships must be disclosed upfront to the Board of directors for approval. Each director must annually or as a conflict of interest situation occurs, disclose any conflict of interest.
- d) Declaration forms –
  - i. COI disclosures must be made on the prescribed form annexed hereto, marked “A”.
  - ii. Disclosures with regards to the giving or receiving of gifts and or hospitality must be made on the prescribed form annexed hereto, marked “B”. NB – The

giving and receiving of all gifts/hospitality must be recorded on a declaration form.

- iii. The forms must be handed in to your immediate manager, who in turn will hand it over to a company representative nominated by EXCO. EXCO will then either approve or decline the request. Feedback will then be given to the EXCO representative who will communicate with the affected staff member.
- e) Registers – Upon receipt of the declaration forms, the EXCO representative who is tasked with maintaining separate COI and gift registers will record same in their registers which can, upon request, be open for viewing. The registers will also be submitted to the “Group Risk & Compliance Manager” for reviewing.
- f) Managing a COI or declaration for gift / hospitality – Upon EXCO identifying a conflict it must be properly managed i.e. assessed and either approved or declined:
  - i. Approval – Where EXCO finds that the conflict is mild and will not cause reputational harm to the company, the conflict can be approved and recorded on the same declaration form and communicated to the employee. Conditions & mitigating controls can also be recorded on the declaration form and communicated to the employee.
  - ii. Declining of request – Where EXCO finds that the conflict is inappropriate and may cause reputational harm, the request will be declined. The decision will be recorded on the declaration form and communicated to the employee. Employees have a right to request that the decision be reviewed. The request must be in writing and addressed to the MD / CEO of the Company who will deal with same.

## **5. Avoidance & Mitigation of Conflicts of Interest**

The Act states that:

- (a) a provider and a representative must avoid and where this is not possible, mitigate, any conflict of interest between the provider and a client or the representative and a client;

Scorpion aims to do this:

- i. By implementing a conflict of interest policy and ensuring that the policy is communicated to all employees, representatives and associates;
- ii. Conducting regular inspections/audits on processes and procedures relating to commissions, remuneration, fees and financial interests proposed or received in order to avoid non-compliance;
- iii. Implementation and maintenance of COI and gift declaration forms & registers.

Where however, despite Scorpion’s best efforts prevail and a conflict of interest situation arises with a client, then Scorpion will

- (b) in writing, at the earliest reasonable opportunity –

- i. disclose to a client any conflict of interest in respect of that client, including –
  - the measures taken in accordance with Scorpion’s conflict of interest management policy, to avoid or mitigate the conflict;
  - any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;
  - the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest; and

- ii. inform a client of the conflict of interest management policy adopted by the company and how it may be accessed.

#### **6. Financial interest received or offered**

Scorpion and its representatives may only receive or offer the following financial interest from or to a third party –

- i. commission authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
- ii. commission authorised under the Medical Schemes Act, 1998 (Act No. 131 of 1998);
- iii. fees authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), Short-term Insurance Act, 1998 (Act No. 53 of 1998) or the Medical Schemes Act, 1998 (Act No. 131 of 1998), if those fees are reasonably commensurate to a service being rendered;
- iv. fees for the rendering of a financial service in respect of which commission or fees referred to in subparagraph (i), (ii) and (iii) is not paid, if those fees –
  - are specifically agreed to by a client in writing; and
  - may be stopped at the discretion of that client;
- v. fees or remuneration for the rendering of a service to a third party, which fees or remuneration are reasonably commensurate to the service being rendered;
- vi. subject to any other law, an immaterial financial interest; and
- vii. a financial interest, not referred to under subparagraph (i) to (vi), for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.

#### **7. Financial interest that could not be received or offered**

Scorpion and its representatives may not offer any financial interest to a representative of that provider for –

- i. giving preference to the quantity of business secured for the provider to the exclusion of the quality of the service rendered to clients; or
  - ii. giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or
  - iii. giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.
8. For the purposes of this section, where the same legal entity is a product supplier and a provider, paragraph 5 does not apply to the representatives of that entity. That entity is subject to the contents of paragraph 6.
9. Non-Compliance - consequences of non-compliance will be dealt with in terms of the FAIS Act and Scorpion's internal employment and IR policies & procedures.
10. Type and basis on which a representative qualifies for a financial interest from the provider - Scorpion representatives qualify for financial interests in the form of commissions & remuneration as listed under clause 6 of this policy. They do not receive any financial interest as per clause 7 of this policy.

11. List of Scorpion's associates –

- Legal Expenses Group Africa Limited

- Legal Expenses Insurance Southern Africa Limited
- UGO Selling Proprietary Limited
- LegalWise Investments Proprietary Limited
- The Hollard Insurance Company Limited (Shareholding in Legal Expenses Group Africa Ltd)

12. Names of third parties in which the provider holds an ownership interest and the extent of the ownership interest – this will be disclosed by the MD / CEO upon request

13. Names of third parties that hold an interest in the provider and the extent of the ownership interest – this will be disclosed by the MD / CEO upon request