

Conflicts of Interest

1. Introduction and Purpose of Policy

Pengana Capital Group Limited (PCG) is an ASX-listed investment company.

Pengana Capital Limited (PCL) and Pengana Investment Management Limited (PIML) are wholly owned subsidiaries of PCG Limited. As Australian Financial Service Licence (AFSL) holders PCL and PIML (Pengana) are responsible for compliance with the law and the conditions of their licences.

Section 912A(1)(aa) of the Corporations Act requires that PCL and PIML must have in place 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 as part of the financial services business of the licensee or the representative.

2. Conflicts of Interest

ASIC Regulatory Guide 181 (RG181.15) "Licensing: Managing conflicts of interest" defines a conflict of interest as:

"...circumstances where some or all of the interests of people (clients) to whom a licensee (or its representative) provides financial services are inconsistent with, or diverge from, some or all of the interests of the licensee or its representatives. These include actual, apparent or potential conflicts of interest".

The Explanatory Memorandum to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 (Clerp 9 Act) states (at paragraph 5.599) that there are two main types of conflicts of interest which will require compliance with the conflicts management obligation.

A conflict within the financial services business. An example includes:

- dealing on behalf of various clients or across different areas of the business, such as between publishing research in a client newsletter and market making.

A conflict between something within the financial services business and something outside the financial services business. Examples include:

- the licensee lending (as principal) to a particular enterprise whilst at the same time underwriting a public offer for the same enterprise; or
- where the objectivity of research is compromised by the analyst's personal interests or relationships.

Accordingly, conflicts of interest are circumstances where some or all of the interests of a client are inconsistent with, or diverge from, some or all of the interests of Pengana or its representatives providing the financial services to the client. This includes actual, apparent and potential conflicts of interest.

Licenses whose interests conflict with those of the client are more likely to take advantage of that client in a way that may harm that client and may diminish confidence in the licensee or the market. Accordingly, Pengana must look broadly at the client's interest whether or not it has a legal duty to take those interests into account.

It is also important to remember that the client relationship gives rise to a fiduciary duty in relation to the representative's conduct towards the client. To meet the requirements arising from the fiduciary duty, Pengana and its representatives have fiduciary duties that include:

- avoiding, controlling and / or disclosing any potential conflicts of interest;
- the duty to use reasonable skill and care;
- the duty to act in the clients' best interest and do the best on behalf of the client;
- the duty to follow instructions from clients;
- disclosing any financial interest in the investment or financial product advice offered to a client; and
- obtaining for the client the best terms available in the situation.

3. Structural Arrangement to Manage Conflicts of Interest

The conflicts management obligation does not prohibit conflicts of interest. Rather, Pengana must have adequate **arrangements to manage** all conflicts of interest affecting its business. Such conflicts management arrangement must be established and maintained and be appropriate to the nature, scale and complexity of the business. Pengana uses the following mechanisms¹ to manage conflicts of interest:

- controlling the conflicts of interest,
- disclosing the conflicts of interest; and/or
- avoiding the conflict of interest.

Thus, where conflicts cannot be adequately managed through controls and disclosure, Pengana must *avoid* the conflict i.e. for those conflicts of interest that have such a serious potential impact on Pengana or its clients, the only way to adequately manage those conflicts will be to avoid them and refrain from providing the relevant financial service.

The representatives of Pengana at the date of this Policy are all aware of the actual and potential conflicts of interests that exist in the business. All new employees undergo induction training which includes discussing the actual and potential conflicts of interests that exist in the business and the arrangements Pengana has in place to manage them.

¹ As per ASIC RG 181.20

4 Procedures for the Identification, Assessment and Evaluation of Conflicts of Interest

Should any representative become aware of a situation that they believe constitutes, or may constitute, an actual or potential conflict of interest, the matter should immediately be discussed with the Chief Financial Officer (CFO), Pengana's General Counsel or Head of Operations to enable that person to assess and evaluate the conflict and implement procedures to control or disclose the conflict or, alternatively, make the decision to avoid the conflict.

5. Procedures for Controlling Conflicts of Interest

To control conflicts of interest² Pengana requires:

- actual and potential conflicts of interest relating to its business be identified;
- identified conflicts be assessed and evaluated; and that
- Pengana decides on, and implements, an appropriate response to those conflicts.

Conflicts of Interest can be entered onto the register on the following link:

http://pengana.csassurance.com/contracts/new?contract_template=10&token=fXmey2s-rKoACKm_j5Lp

Conflict management arrangements will be regularly monitored. The CFO (or delegate), as part of the Compliance Monitoring Program and/or as the business changes, will regularly review Pengana's conflicts management arrangements to ensure that they continue to be appropriate.

(a) Remuneration practices

The remuneration structure of the representatives of Pengana has been considered to ensure that Pengana has adequate conflict management arrangements in place. Part 7.7 of the Corporations Act generally approaches remuneration issues from a disclosure perspective (i.e. remuneration must be fully disclosed). This is achieved via the provision of the Financial Services Guide and Product Disclosure Statement to prospective clients with respect to the registered managed investment scheme. Part 7.7A of the Corporations Act also imposes a ban on conflicted remuneration structures (unless an exemption applies).

Conflicted remuneration is any benefit given to an AFS licensee, or its representative, **who provides financial product advice to retail clients** that, because of the nature of the benefit or the circumstances in which it is given, **could reasonably be expected to influence:**

- the choice of financial product recommended to retail clients by the AFS licensee or representative; or
- the financial product advice given to retail clients by the AFS licensee or representative.

Whilst Part 7.7A of the Corporations Act is not directly applicable to Pengana's business, remuneration practices that place the interest of Pengana or its representatives in direct and significant conflict with those

² As per ASIC RG 181.28

of its clients (i.e. whereby it may impact upon Pengana's ability to provide an efficient, honest and fair provision of financial services) will be closely monitored, controlled and disclosed, and avoided where commercially practicable.

By way of an example, ASIC RG 181.38 states that licensees should avoid remuneration structures where advisers are paid exclusively by commission (e.g. no salary or other remuneration is paid) and that the need for robust conflicts management arrangements is likely to be higher where a licensee relies heavily on commission based remuneration.

Most Pengana representatives are remunerated by way of a base salary and discretionary bonus, or profit share based on the overall profit generated by Pengana and accordingly, this potential conflict of interest is minimal. Furthermore, this remuneration structure does not constitute conflicted remuneration.

The exception to this is the Business Development Managers (**BDMs**) who have a component of their bonus determined by their ability to meet sales targets. However, this is balanced by the fact that these staff are paid market salaries i.e. not reliant on achieving their sales targets (net inflows). Furthermore, the advice provided by BDMs is provided to Dealer Groups and Financial Planners (who are classified as wholesale by virtue of the fact they hold an AFS Licence), and thus the conflicted remuneration provisions do not apply (a conflict may still arise but the benefit by way of an increased bonus will not constitute conflicted remuneration.)

Pengana is remunerated by way of a management fee and a performance (or incentive) fee linked to the performance of the Funds or managed discretionary accounts (**MDAs**). The performance of the Funds is directly a result of the decisions made by Pengana. Hence, the interest of the client and Pengana are closely aligned i.e. they both derive their income (fee) based on the performance of the Funds or the MDAs.

Pengana has minimal conflicts of interest with regard to operating the Funds and the MDAs and it is controlled by clearly disclosing the remuneration structure in the Financial Services Guide and Product Disclosure Document (for registered Funds), the Information Memorandum (for unregistered Funds) and Investment Management Agreement (for MDAs).

Furthermore, another control implemented to manage this potential conflict of interest is to ensure that all investments are based on either technical or fundamental analysis, they are independent and objective and well supported by proper research and analysis. Investments should be unambiguous, consistent and transparent.

(b) Treating clients fairly

Pengana must ensure that it treats its clients equitably and fairly, and has considered the following:

- (i) Is Pengana providing financial services in a manner that unfairly puts the interests of itself (or its representatives) ahead of its clients?*

The interests of Pengana and the interest of its client are generally closely aligned. Pengana may invest directly in a Fund (e.g. provide seed capital). Both Pengana and the client derive their income (fee)

based on the performance of the Fund or MDA. Thus, the performance of a Fund is a common goal and does not result in Pengana putting its interests before its client.

Pengana is also remunerated by way of a management fee for operating a Fund or MDA which is linked to the value of funds under management. This fee is generated by Pengana regardless of the performance.

Accordingly, the interests of Pengana and the interest of its client are not consistent. However, this conflict of interest is controlled by clearly disclosing the remuneration structure in the Investment Management Agreement or Offer Document.

(ii) *Is Pengana providing financial services in a way that unfairly puts the interests of one client ahead of the interests of other clients?*

Pengana predominantly operates unit trusts where clients' funds are pooled and invested collectively. Accordingly, the value of the units fluctuates equally for all those invested.

Where transactions are being undertaken on behalf of a number of Funds or accounts, it is important that the allocation of trades treats different Funds or accounts fairly. Pengana has developed an allocation policy to address this.

(iii) *Is Pengana using knowledge about its clients in a way that is likely to advance their own interests without sufficient disclosure to affected clients?*

Pengana does not typically trade on its own account and thus, has no conflict with respect to the knowledge it has about the financial products in which the Funds or the MDAs invest.

Pengana appreciates that it may be faced with conflicts of interest with regard to its representatives. However, it has implemented staff trading procedures as set out in its Policy Document entitled "Code of Conduct" Policy and Personal Securities Trading Policy. The CFO (or delegate), as part of the Compliance Monitoring Program, monitors compliance with these procedures.

5. Procedures for disclosing conflicts of interest

Clients must be "adequately informed" about any material conflicts of interest that may affect the provision of financial services to them. As stated within ASIC RG 181.50 "adequate disclosure means providing enough detail in a clear, concise and effective form to allow clients to make an informed decision about how the conflict may affect the service being provided to them." Accordingly, general disclosure is unlikely to satisfy this requirement.

Pengana must ensure that disclosure of conflicts of interest:

- (i) is timely, prominent, specific and meaningful to the client;
- (ii) occurs before or when the financial service is provided (allowing the client a reasonable time to assess its effect); and
- (iii) refers to the specific service to which the conflict relates.

ASIC RG181.54 states that when providing financial product advice, disclosures on the following matters will generally be appropriate and should be given at or about the time of providing the advice:

- (a) the extent (if any) to which Pengana (or any associated person) has a legal or beneficial interest in the financial products that are the subject of the financial product advice;
- (b) the extent (if any) to which Pengana (or any associated person) is related to or associated with the issuer or provider of the financial products that are the subject of the financial product advice; and
- (c) the extent (if any) to which Pengana (or any associated person) is likely to receive financial or other benefits depending on whether the advice is followed.

e6. Procedures for avoiding conflicts of interest

If a conflict has a serious potential impact upon Pengana or its clients, then that conflict must be managed by avoiding it. In such cases, merely disclosing the conflicts and imposing internal controls will be inadequate.

7. Putting the interests of clients first

Representatives have a fundamental duty to put the interests of clients first and should not allow this duty to be influenced by their own interests or those of Pengana. It is the responsibility of Pengana to comply with the ethical standards against which the integrity and quality of its service will be judged.

Representatives must therefore be independent and objective and have a reasonable basis, supported by proper due diligence or analysis, for the financial products in which they invest on behalf of the Funds and/or MDAs. It is the responsibility of Pengana to adhere to the following standards to ensure Pengana's commitment to clients and to promote and protect client confidence and integrity in the financial markets.

The following guidelines have been developed to ensure that Pengana and its representatives are familiar with their responsibilities and do not allow any possible conflict of interest to affect their service to clients:

- (i) Independence - All representatives are expected to be independent and objective observers and must have a reasonable basis, supported by analysis for any investments made on behalf of the Funds or the MDAs.
- (ii) Disclosure of Interests - Any reports or other publications will specifically and prominently disclose any conflicts of interests or potential conflicts of interest of Pengana (and its representatives).

Conflict or potential conflicts of interest may include:

- Any economic or financial interest the representative or their immediate family may have directly or indirectly in an entity that may influence an investment; and/or
- Whether the representative is offered any commission or other payment from any person or entity.

- (iii) Other Disclosure - A report must disclose, specifically and prominently a list of definitions of the terms used in the report and, if applicable, all risk factors.

8. Outsourcing

Pengana recognises the importance of ensuring the longevity of good reliable relationships with service providers. Accordingly, Pengana has established Outsourcing procedures that must be complied with prior to the appointment of an outsourcing partner and provides guidance on the procedures to be followed during the relationship. One of the issues considered prior to the appointment of a service provider includes the determination of whether any conflicts of interest may arise.

Service providers are required to disclose any possible conflicts of interest during the selection process. Service providers that are considered to be inappropriate (such as family members or other close relatives i.e. where the potential conflict is too great) will be discarded.

Conflict can arise in many situations. For example, a conflict of interest exists when an employee, or family member, obtains a personal benefit at Pengana's expense or contrary to Pengana's best interest. While it is impossible to identify every type of relationship, activity or interest which constitutes a potential conflict, there are certain types of conduct which must be avoided or disclosed when encountered (in this regard representatives are referred to paragraph 9 below).

Once a service provider has been approved, a term of the service agreements will be that the service provider immediately notifies Pengana if it becomes aware of any conflict or potential conflict that could impact on its ability to provide the services.

All concerns regarding any conflicts will be reported to the CFO. The CFO (in consultation with other senior management) will determine whether Pengana should continue with that service provider or terminate the agreement.

9. Conflicts of Interest Specific to Staff

9.1 Registered & Unregistered Funds

Pengana encourages its representatives to invest in its registered and unregistered Funds ("Funds"). This would also apply to investing in any listed Fund (please refer to section 9.2 below). This helps to align the interest of the representative to the performance of the Funds and provides re-assurance to prospective investors (i.e. representatives have their own funds at risk as well as the investors).

Pengana does not consider this to be a conflict of interest. On the contrary, it aligns the interest of the representative to the performance of the Funds.

9.2 Listed Funds (or other listed products)

In relation to listed Funds, Pengana recognizes and appreciates that it may be faced with potential conflicts of interest with regard to its representatives buying or selling their listed investments (unlisted investments may only be bought or sold in accordance with the Product Disclosure Statement or Information

Memorandum for all investors). Such trading cannot be at the expense of other investors. Pengana has therefore developed comprehensive personal trading procedures to manage any potential conflicts of interest.

9.2 External interests

The importance of employee involvement in outside business, political and community activities is recognised by Pengana. Whilst Pengana encourages representatives to engage in such activities, it does so on the basis that the activities are legal and they do not interfere with the proper performance of the duties of representatives, nor create a conflict of interest for Pengana (or its representatives).

Each representative is expected to avoid or disclose any, activity, investment, interest or association of the representative or members of his/her immediate family which interferes, or appears to interfere, with the representative's ability to exercise proper judgement in the advancement of Pengana's business and best interests.

While it is impossible to identify every type of relationship, activity or interest which constitutes a potential conflict, there are certain types of conduct which must be avoided or disclosed when encountered. Examples of potential conflicts which must be avoided or disclosed, include:

- (i) Ownership by a representative or immediate family member of a substantial financial interest in a business which maintains a relationship with, or is a competitor of Pengana;
- (ii) Employment of direct family member;
- (iii) Employment or significant affiliation with an organisation which does or seeks significant business with or is a competitor of Pengana;
- (iv) Extension to, or acceptance by, a representative or immediate family member of compensation, loans (other than from an established bank or financial institution under customary terms and rates), gifts of more than token value, or substantial benefits or favours to or from a client or an organisation or individual which does or seeks to do business with, or is a competitor of Pengana;
- (v) Representation of Pengana by a representative in a transaction in which the representative, immediate family member or business associate of the representative has a substantial interest in the transaction;
- (vi) Disclosure of confidential Pengana information. Disclosure may be made to a person who represents, is employed or retained by Pengana if such person is required to know such information to properly perform his/her duties;
- (vii) A representative's use of confidential Pengana information for personal profit or advantage; and/or
- (viii) Competition with Pengana by a representative, directly or indirectly, in any purchase, sale or other transaction in which Pengana is a party.

Representatives should avoid not only a conflict of interest but also the appearance of a conflict of interest. While there is no absolute test to determine what constitutes a conflict, or the appearance of a conflict, representatives should consider how others could view the activity or interest.

As a result, representatives must seek management approval in writing before entering into or continuing the transaction or relationship.

10. Monitoring Compliance with Pengana's Policies and Procedures

Pengana monitors compliance with this policy to manage conflicts of interest that may influence the integrity of the markets and Pengana's ability to provide an efficient, honest and fair provision of financial services. The CFO (or delegate) will conduct reviews to identify, assess and evaluate conflicts of interest to the business and to ensure that the procedures operating are adequate.

Where instances of non-compliance with Pengana's conflicts management arrangements are identified, disciplinary action may be instigated against the Representative concerned.

In some circumstances, Pengana may be obliged to notify regulatory and/or criminal authorities of a serious breach of this policy. For example, insider trading is a crime and can result in imprisonment, fines, orders to pay compensation and other penalties against Pengana and its representatives.

11. Record Keeping³

Pengana will maintain a Register, for at least seven years after the cessation of any identified conflict, that records:

- (i) The conflicts identified and action taken; and
- (ii) Any reports given to Pengana about conflicts of interest matters.

Conflicts of Interest can be entered onto the register on the following link:

http://pengana.csassurance.com/contracts/new?contract_template=10&token=fXmey2s-rKoACKm_j5Lp

12. Procedures for ensuring that the quality of your services is not significantly compromised by the presence of conflicts of interest

The quality of the service is not significantly compromised by the presence of conflicts of interest as Pengana:

- (a) manages any minor conflicts, alternatively
- (b) discloses all material conflicts i.e. such disclosures are contained in its Offer Documents, Agreements and other reports.

13. Persons responsible for implementing, reviewing and updating the conflicts management arrangements

The persons responsible for implementing, reviewing and updating the conflicts management arrangements are the CFO, the other RMs, General Counsel, Head of Operations and ultimately, the Board.

³ As per ASIC RG 181.46

The conflict management arrangements are regularly monitored and reviewed by the CFO (or delegate) as part of the Compliance Monitoring Program and/or as the business changes. Furthermore, the Board regularly reviews Pengana's conflicts management arrangements to ensure that they continue to be appropriate.