

Aspen Funds Management Ltd (AFM)

Related Party Transactions Policy

Related Parties are defined by the Corporations Act at sections 9 and 228. The test for public companies is one of control, which at section 50AA is defined as the practical assessment of whether one entity can determine or influence financial or operations policies of the other. Related Parties include Directors of a public company, and their spouses, parents and children.

A 'related party transaction' is any transaction through which a public company or registered managed investment scheme provides a financial benefit to a related party (such as a director and their spouse; or a public company or registered scheme).

Almost by definition, related party transactions involve conflicts of interest because related parties are often in a position to influence the decision of whether the benefit is provided to them, and the terms of its provision. The case where one public company or scheme provides a benefit to a related public company or scheme is considered in Aspen's Conflict of Interest Policy. Benefits to directors and their families are the focus of this Related Party Transactions Policy

Purpose of this policy

This policy aims to encourage transparency and best practice in the market, with a view to facilitating informed member decisions.

In relation to disclosure about related party transactions, AFM seeks to promote informed decision-making by investors and members when deciding how to vote on proposed related party transactions; or when considering a new or changed level of investment in AFM managed entities.

This policy is also intended to promote consistent market practice for the application of the arm's length exception from the requirement to seek member approval under Ch 2E.

In addition, this policy deals with the procedures under the Corporations Act for directors' meetings and members' meetings.

Overview of legal framework for related party transactions

The objective of the related party provisions in Ch 2E and Pt 5C.7 is to protect the interests of members of public companies and registered schemes by requiring member approval for giving financial benefits that could endanger members' interests: s207 and 601LB.

Directors' meetings – voting restrictions – section 195

Directors shall conform with the requirements of section 195. This section requires that directors having a personal material interest must not be present or vote at a meeting at which the matter is considered.

The Board (without the interested director) may pass a resolution specifying the matter and resolving that the interested director may be present and or vote under section .

What is a Material Personal Interest?

Much case law exists to determine this , but ASIC makes the point that in interpreting the phrase, 'material personal interest', and in considering whether the prohibition applies, companies should bear in mind that a purpose of the prohibition is to minimise risks or harm to the company arising from conflicts of interest.

Under common law, as persons in a fiduciary position, directors have duties not to profit from a position of trust or place themselves in a position where duty and interest might conflict.

Member approval

If public companies and responsible entities decide that it is in the best interests of the entity to enter into a related party transaction, they will then need to consider whether to obtain member approval

Under s208, for a public company or an entity it controls to give a financial benefit to a related party of the public company:

- (a) the company's members must approve the transaction in the way set out in s217–227; or
- (b) giving the financial benefit must fall within an exception set out in s210–216.

Directors of companies also have statutory duties (s180–184) and common law duties. These duties apply regardless of whether a transaction receives member approval in accordance with the Corporations Act (s230).

Exceptions

Member approval is generally not required for:

- (a) transactions that are on arm's length terms (s210);
- (b) benefits that are reasonable remuneration or reimbursement of officers' and employees' expenses (s211); and

The arm's length exception in s210 provides that member approval is not needed to give a financial benefit on terms that would be reasonable in the circumstances if the public company and the related party are dealing at arm's length, or on terms that are less favourable to the related party than these terms.

Such judgment should be supported by independent expert advice if there is any doubt in directors' minds.

Expert advice for directors

Directors should ensure they have, or have access to, enough knowledge or expertise to assess all aspects of proposed related party transactions — where necessary, they should obtain appropriate professional and expert advice from any appropriately qualified person.

The directors will need to be satisfied that it is appropriate to rely on the expert advice, including that the opinion given by the expert is directly relevant to the decision at hand. However, directors relying on information, professional advice or expert advice provided by others must make their own independent assessment of the information or advice: see s189. Advice does not replace careful judgement by the directors.

Disclosure documents

Information about related party arrangements is information that investors reasonably require to make informed decisions about whether to acquire securities or managed investment products, and therefore should be included in disclosure documents.

Disclosure about related party arrangements should be made in a manner that ensures that investors understand how related party arrangements affect the entity overall and, if these arrangements are significant, the benefits and risks associated with them.

Attachment

Guidance provided by RG76

The following table shall give guidance to AFM directors in the matter of related party transactions. In particular, member approval processes are documented here.

What decision is being made	What the policy covers	Reference to RG76 Sections
Whether to enter into a related party transaction	Voting restrictions for directors at directors' meetings and when Aspen may give relief from these restrictions Note: This guidance applies when a director has an interest in the matter being considered at the meeting, regardless of whether the matter is a related party transaction.	Section B
Whether to seek member approval	The 'arm's length' exception in s210, including factors to consider when applying this exception	Section C

What to include in notices of meeting and explanatory statements (meeting materials) if member approval is sought	The requirements of s218 and 219, the focus of our review of meeting materials and the exercise of ASIC's powers to shorten the 14-day review period or issue comments on the meeting materials	Section D
Which votes to count at a members' meeting	Voting exclusions for related parties at members' meetings and when ASIC may give relief from the relevant provisions	Section D
What to include about related party transactions in other disclosures	The content of other disclosures to investors (including prospectuses, Product Disclosure Statements (PDSs) and takeover documents)	Section E

Considered by the Compliance Committee _____ July 2011

Adopted by the Board _____ August 2011