

## CORPORATE TRUSTEES ASSOCIATION INCORPORATED

# CODE OF PRACTICE FOR LICENSED SUPERVISORS AND STATUTORY SUPERVISORS

## 1 Licensed supervisors

The Financial Markets Authority has issued licences to Members pursuant to section 16(1) of the Financial Markets Supervisors Act 2011 to act as a Supervisor (including both Licensed Supervisors and Statutory Supervisors) of regulated offers which can include debt securities, registered schemes and retirement villages (referred to as **Supervised Products**). Supervisors are the FMA's front line supervisor and act on behalf of investors (including residents in a retirement village).

## 2 Purpose

This code sets out a 'professional practice' framework for Members of the Corporate Trustees Association in respect of their supervisory activities of Supervised Entities (includes issuers of debt securities, managers of registered schemes and operators of retirement villages), always with reference to the Supervised Products they have issued.

## 3 Fundamental principles of supervision

The 'professional practice' framework comprises the following fundamental principles.

**3.1** *Investor Perspective:* Acting in the best interests of the investors (i.e. the 'end customer' of the Supervised Entity (excluding the residents of retirement villages where the Member's duty is limited). Supervision is undertaken through the lens of the investor, and materiality of matters is considered from the investor perspective with reference to the terms and features of the Supervised Product (excluding retirement villages) that they have invested in. When considering the investor, it is assumed that the investor has read the disclosure information and has a reasonable understanding or has taken financial advice.

**3.2** *Governing Documents:* Fit for Purpose Members must ensure that governing documents meet legislative requirements and are fit for the type of offer. Legislation empowers the Members who must ensure that the governing documents do not fetter or impede the Members' powers and duties pursuant to the Financial Markets Conduct, Retirement Villages and Non-Bank Deposit Takers legislation. Members must ensure that they have clearly understood the terms of the offer and governing documents, so the Members can supervise accordingly.

**3.3** *Planning and Assessment:* Members will be cognisant of the changing risks (economic and other) in respect of Supervised Products and Supervised Entities; and will regularly consider and adjust their supervisory activities accordingly. Member's planning will reflect the assessment of risk ensuring they have:

- adequate resourcing for supervising their Supervised Entity appointments;
- appropriate processes and policies for monitoring activity; and
- reviews to confirm their monitoring processes are occurring.

**3.4** *Proactive Monitoring:* Members recognise there is significant 'value add' to Supervised Entities and ultimately the investors or retirement village residents through proactive monitoring which includes:

- review and testing of the processes and controls utilised by Supervised Entities. This is expected to assist Supervised Entities by identifying areas for improvement or identifying issues before they have a material impact on the Supervised Entities' customers;
- regular interaction (email, meetings and phone calls); and
- deep dives to assess the risk of functions undertaken by Supervised Entities where appropriate, plus thematic reviews of any wider industry risks that the Supervisor may be concerned about.

In addition to proactive monitoring Members will use a variety of other monitoring tools to monitor whether the Supervised Entity is meeting its obligations including:

- receipt and review of regular reporting from the Supervised Entity on matters material to the appointment; and
- reporting from third parties such as auditors and custodians where appropriate.

Professional scepticism (reviewing and considering the reasonableness) should be prevalent in evaluating information received from the Supervised Entity.

**3.5** *Materiality:* The determination of whether a Supervised Entity's contravention of an obligation is material requires significant judgement by Members. Exercising judgement of materiality includes:

- consistent application of any framework or guidelines which the CTA has developed;
- reference to industry practice or any FMA guidelines;
- considering the matter from an investor's perspective and whether an investor would consider the matter could have a material impact upon their investment or the actions available to them such as exiting; and

- considering the avenues available to the Supervised Entity to remediate the matter.

Where, after due consideration a firm conclusion cannot be reached, Members should consult with the Financial Markets Authority.

#### **4 Skills and capabilities**

Members will maintain a programme of training to ensure that the persons employed or engaged in the supervisory activities have the requisite skill and capacity to carry out such activity.

#### **5 Relationship with regulators**

Members will maintain a professional relationship and work cooperatively with the regulators.

#### **6 New regulated appointments**

Prior to accepting any appointment, Members will, consider the risks associated with:

- the experience of management and directors of the proposed supervised entity;
- any regulatory issues or concerns that the regulators may have;
- their license conditions;
- the ability for the proposed supervised entity to meet its obligations to investors or retirement village residents;
- the ability to negotiate fit for purpose governing documents;
- adequacy of the product disclosure statement informing the investor about the investment or the disclosure statement informing the prospective resident of the Village/ Occupation Right Agreement;
- any conflicts or potential conflicts of interest and ensure these are mitigated and /or manageable so that the interests of investors or retirement village residents in the Supervised Product are not and are not perceived to be adversely affected; and
- if a Supervised Entity is changing Supervisors (other than via an RFP process), then discussions must be held between both the incoming and outgoing Supervisor to discuss any specific risks or concerns the outgoing Supervisor may want to bring to the attention of the incoming Supervisor.

On acceptance of an appointment the Member must ensure that their supervisory activities reflect the assessed risks (including unique risks) associated with the Supervised Product and the Supervised Entity.

## **7 Conflicts of interest**

Members must be independent of the Supervised Entity which they are supervising. This includes being independent of the interests of the issuer, manager and promoters of a Supervised Entity; or persons associated with a retirement village. This is paramount.

Members will take all reasonable steps to avoid conflicts of interest. Members who become aware of an actual or potential conflict of interest shall immediately take appropriate steps to ensure that the interests of investors and retirement village residents are not and are not perceived to be in any way prejudiced.

Members recognise that a general conflict across most appointments is the conflict between the Member's commercial interests and that of their fiduciary and legislative obligations. Members must maintain a robust framework for exercising supervisory discretions with respect to the interests.

## **8 Practice guidelines**

This Code of Practice will be complemented with Practice Guidelines for each Regulated Product which provide guidance specific to that product for Members.

Practice Guidelines may refer to Guidelines on specialist matters which are considered material to the Product.

## **9 Status**

This Code of Practice, Practice Guidelines for Supervised Products and any Guidelines should not be taken as comprehensive and exhaustive and may not be applicable in all circumstances. However, Members should be able to clearly demonstrate why they are not applicable.

## **10 Review and changes**

The Code of Practice has been unanimously approved by Members. The Code of Practice will be reviewed at least annually, and any proposed changes will require the unanimous approval of Members.