

Chapter 1

Commission Delegated Regulation (EU) 2016/1075

Article 41 Material common or conflicting interests

(1) The independent valuer shall not have an actual or potential material interest in common or in conflict with any relevant public authority or the relevant entity.

(2) For the purposes of paragraph 1 an actual or potential interest shall be deemed material whenever, in the assessment of the appointing authority or such other authority as may be empowered to perform this task in the United Kingdom, it could influence, or be reasonably perceived to influence, the independent valuer's judgement in carrying out the valuation.

(3) For the purposes of paragraph 1 interests in common or in conflict with at least the following parties shall be relevant:

(a) the senior management and the members of the management body of the relevant entity;

(b) the legal or natural persons who control or have a qualifying holding in the relevant entity;

(c) the creditors identified by the appointing authority, or such other authority as may be empowered to perform this task in the United Kingdom concerned, to be significant on the basis of the information available to the appointing authority or such other authority as may be empowered to perform this task in the United Kingdom;

(d) each group entity.

For purposes of this paragraph, "senior management" means those natural persons who exercise executive functions within the relevant entity and who are responsible, and accountable to the management body, for the day-to-day management of the relevant entity.

(4) For the purposes of paragraph 1 at least the following matters shall be relevant:

(a) the provision by the independent valuer of services, including the past provision of services, to the relevant entity and the persons referred to in paragraph 3, and in particular the link between those services and the elements relevant for the valuation;

(b) personal and financial relationships between the independent valuer and the relevant entity and the persons referred to in paragraph 3;

(c) investments or other material financial interests of the independent valuer;

(d) in relation to legal persons, any structural separation or other arrangements that shall be put in place to address any threats to independence such as self-review, self-interest, advocacy, familiarity, trust or intimidation, including arrangements to differentiate between those staff members who may be involved in the valuation and other staff members.

(5) Without prejudice to paragraphs 3 and 4, a person shall be deemed to have an actual material interest in common or in conflict with the relevant entity where the independent valuer, in the year preceding the date on which that person's eligibility to act as independent valuer is assessed, has completed a statutory audit of the relevant entity pursuant to the law of the United Kingdom (or any part of it) which, immediately before IP completion day, implemented Directive 2006/46/EC of the European Parliament and of the Council and its implementing measures, as that law has effect on IP completion day..

(6) Any person considered for the position of independent valuer, or appointed as an independent valuer shall:

(a) maintain, in accordance with any applicable codes of ethics and professional standards, policies and procedures to identify any actual or potential interest which may be considered to constitute a material interest in accordance with paragraph 2;

(b) without delay notify the appointing authority or such other authority as may be empowered to perform the task referred to in paragraph 2 in the United Kingdom of any actual or potential interest which the independent valuer considers may, in the assessment of the authority, be considered to amount to a material interest in accordance with paragraph 2;

(c) take appropriate steps to ensure that none of the staff or other persons involved in carrying out the valuation have any material interest of a kind as referred to in paragraph 2.