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# FINANCIAL SERVICES REGULATION POLICY 2025

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Final, 21 January 2025

#### DOCUMENT PROCESS

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#### VERSION MANAGEMENT

LIST OF VERSIONS	POLICY MANAGER	REVIEW GROUP	DATE
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2.0	PD ED	Portfolio Director	October 2024
3.0	PD ED	Economic Development Advisory Board	December 2024
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# 1 Introduction

## 1.1 Background

1. This paper sets out a policy for the modernisation of selected parts of our financial services regulatory framework.
2. This work follows Executive Council’s instruction to review the FSO through its endorsement of the Sustainable Economic Development Strategy 2023-2033 (SEDS). The strategy states: *“Reform of financial services laws and regulations SHG has identified that St Helena’s financial services laws and regulations require reform and modernisation in order to encourage competition within the sector and support economic growth. There are substantial gaps in current legislation. SHG’s objective is to enhance the financial services landscape by removing barriers to entry, while working toward compliance with international best practice and recommendations. Comprehensive reform and updates to existing financial services laws and regulations will be required...”*. The SEDS sets a target of March 2026 for the full review to be complete. This paper constitutes the first stage of that review.
3. The bulk of the current financial services regulatory framework is set out in the Financial Services Ordinance 2008 (the “FSO”) and the Financial Services Regulations 2017 (the “FSR”). It is considered that this framework has a number of significant shortcomings, some of which are described below.
4. A written consultation paper, **“Consultation on Measures to Modernise Financial Services Regulation in St Helena”**, was issued to licensed firms in April 2024, which set out a range of proposals to address some of those shortcomings.
5. The consultation paper was shared with relevant stakeholders, including regulated firms in St Helena, the Financial Services Regulatory Authority (the “FSRA”), the FCDO, and the Attorney General. Detailed written feedback was received from a number of parties.

## 1.2 Identification of Problem/ Challenge/ Opportunity

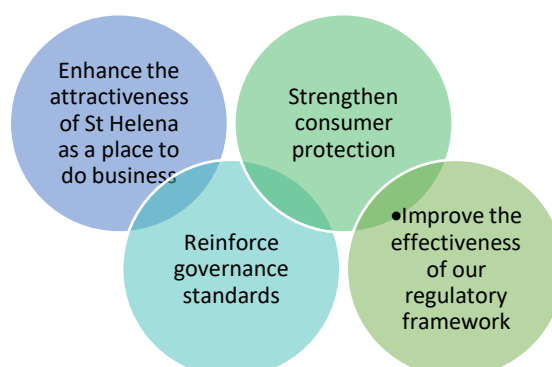


Figure 1 Key Issues Identified with the current situation

### Key Issue 1 – Enhance the attractiveness of St Helena as a place to do business

6. At present, our rules limit the ability of local financial services businesses to provide services to overseas customers. This limitation acts both as a brake on the growth of existing local

businesses and as a disincentive to potential new entrants to our market. In turn, this leads to a lack of new employment opportunities for local people and to inadequate provision of financial products and services to meet local consumer needs.

7. At the same time, the FSO gives the FSRA very limited flexibility to tailor the regulatory framework of the FSO and FSR to the circumstances of prospective new entrants to the market. This “one size fits all” approach to regulation and licensing in turn acts as a disincentive to start-up, early-stage or innovative businesses that might wish to establish a presence in St Helena, and also to cross-border service provision by established overseas businesses.

#### Key Issue 2 – Strengthen consumer protection

8. At present, much of our financial services regulation focuses on prudential standards for licensed firms, and on licensing conditions and procedures. Comparatively, conduct of business standards and consumer protection measures occupy a very small proportion of the rule book, and as a result local consumers of financial services have considerably less protection than they would in the UK and in many other parts of the world.
9. It is desirable to take steps to begin to redress that imbalance, both to address current local needs but also as part of a broader objective of strengthening our regulatory framework to support growth in the financial services sector.

#### Key Issue 3 – Reinforce governance standards

10. At present, there are significant gaps in the local regulatory framework as regards governance standards, as compared to the standards that apply in the UK and other overseas jurisdictions. This creates an accountability gap in respect of senior management and directors of licensed firms, which in turn gives rise to potential consumer protection risks.
11. The FSO requires that a prospective director or manager of a regulated firm must be approved by the FSRA as a “fit and proper” person prior to appointment. But neither the FSO nor FSR contains any elaboration on what is meant by “fit and proper”. Of particular concern, there is nothing that states that “competence” is a necessary component of being considered to be “fit and proper”. Just as importantly, nor is there any statutory obligation on regulated firms themselves to ensure that the individuals appointed to act as directors and managers are fit and proper.
12. In addition, the fit and proper standard is not expressed to apply on a continuing basis, nor are there any direct sanctions that can be applied where the fit and proper standard is not met after appointment takes effect. Furthermore, in most countries, a person approved as fit and proper person to fulfil a position of responsibility in a regulated firm would be subject to a code of conduct published by the regulator, governing his/her day-to-day conduct – that is not the case in St Helena.
13. The overall consequence is that the St Helena fit and proper approval regime, and more broadly the approach to promoting the accountability of individual managers and directors in regulated firms, is significantly out of line with overseas practices. Accordingly, this policy proposes to introduce measures to modernise and strengthen our individual accountability regime, and to

more clearly articulate the standards that approved individuals are expected to follow on an ongoing basis.

#### Key Issue 4 – Improve the effectiveness of our regulatory framework

14. There are a number of weaknesses in the day-to-day operation of our regulatory framework that cause practical difficulties for the FSRA in the supervision of licensed firms, all of which currently risk causing the regulatory framework to not work in the way the government intends. These include:
- a. The FSRA's information gathering and investigation powers are too narrow, particularly in relation to parts of a licensed firm's which do not carry on regulated activities but which nevertheless still have a bearing on the firm's overall financial stability;
  - b. The ability for the FSRA to enter into co-operation and information-sharing agreements is too narrow, limiting its ability to work with other regulators and authorities for supervisory and law enforcement purposes;
  - c. There is a lack of flexibility in the regulatory framework to enable capital adequacy and liquidity standards to be kept up to date in a timely manner;
  - d. Reporting requirements for banks do not deliver adequate and useful data about risks; and,
  - e. Some accountability and decision making in relation to bank credit risk management currently rests with the regulator, where they would not normally be.

### 1.4 Scope

15. The policy deals with legislation that applies to firms that are licensed by the FSRA. These include firms that are licensed **and regulated** by the FSRA, and also ones that are licensed by the FSRA but primarily regulated by their overseas parent regulator rather than by the FSRA. In the latter category are currently a small number of overseas insurance companies that provide specialist insurance services.
16. The policy proposal that deals with client money also applies to estate agents, lawyers and accountants (as well as to FSRA-licensed firms). The FSRA does not licence or regulate non-financial services firms but the provisions of the FSO and FSR that relate to client money do apply to those non-financial services firms.
17. The policy also affects the FSRA, because (i) it is likely to lead to growth in the population of firms that the FSRA licences and regulates, and (ii) it adds to the FSRA's powers and to the breadth of the legislation that the FSRA would oversee, each of which in turn has a bearing on the FSRA's resourcing.

### 1.5 Policy Objective/s and Principle/s

18. The four policy objectives are to:
- Enhance the attractiveness of St Helena as a place to do business;

- Strengthen consumer protection;
- Reinforce governance standards; and,
- Improve the effectiveness of our regulatory framework.

19. The objectives are to some extent inter-related. In particular, success in making St Helena a commercially attractive destination for financial services businesses, in turn requires a more modern regulatory framework to cope with the needs and expectations of new businesses, especially overseas owned or managed businesses, which choose to establish a presence in St Helena.
20. As a more general point, the overall regulatory framework in St Helena is conspicuously out of line with baseline levels of regulation that have prevailed in most jurisdictions, including not just the UK but also in “small island” jurisdictions, for a long period of time. In order to “normalise” St Helena in the eyes of prospective investors in the sector, financial services regulation will need to start to resemble the sort of regulatory framework that those investors are accustomed to in other parts of the world. At the same time, successful commercial efforts to bring new businesses to St Helena necessitate additional and potentially different regulation in order to ensure that those businesses operate within proper regulatory guardrails and that consumers are properly protected.

## 1.6 Baseline Evidence

21. At a high level, the baseline evidence for change for each of the four policy objectives is highlighted in table 1.

**Table 1: Baseline evidence for change**

Enhancing the attractiveness of St Helena as a place to do business	<p>(i) For as long as the legal prohibition on serving overseas customers is in place, there is no realistic prospect of attracting significant numbers of new financial services businesses to St Helena. For many firms, the small addressable market of potential customers in St Helena will act as a deterrent to establishing a local business.</p> <p>(ii) For as long as the FSRA is unable to flex the regulatory framework for overseas firms (other than specialist insurers), it will remain problematic for overseas firms to directly and proactively offer their products and services for sale to local customers. The difficulty that some local firms find in attempting to innovate and/or offer services and products that meet the needs of local consumers leads to a limited range of products and services. Overseas firms cannot help to fix that problem unless the FSRA has the ability to flex its regulatory framework and to allow reliance to be placed on supervision by the overseas firm’s home state regulator.</p>

Strengthen consumer protection	<p>(i) As drafted, the existing client money rules do not establish fully effective client money safeguards. It is not acceptable that consumers are exposed to unnecessary risks of this kind.</p> <p>(ii) Regulated firms are not subject to conduct and ethical standards, of the sort that have been commonplace in much of the world for a long time. It is not acceptable that regulated firms should be able to operate in a regulatory vacuum in which they cannot be held to account either by their customers or by the regulator for their own conduct.</p>
Reinforce governance standards	<p>(i) An “accountability gap” exists because senior management of regulated firms are subject to an unclear “fit and proper” requirement, are not required to be “competent” to do their jobs, nor are they subject to any ongoing regulatory requirements governing their behaviour. Such requirements have been commonplace in other jurisdictions for a long time. It is unacceptable that senior management should not be subject to standards to govern their behaviour and competence.</p>
Improve the effectiveness of our regulatory framework	<p>(i) There is a lack of clarity as to the scope of some of the FSRA’s information gathering and investigation powers which limit its ability to holistically supervise some firms that it regulates. In practice, this means that the FSRA lacks the information to properly understand the financial health of the firms that it regulates and to monitor whether they are appropriately dealing with customers (i.e., to deliver its statutory objectives under the FSO).</p> <p>(ii) The FSRA cannot properly supervise banks if it does not receive the appropriate data from them in relation to such matters as deposit inflows and outflows and credit risk.</p> <p>(iii) It is challenging to keep the regulatory framework up to date if some technical standards require primary legislation to give effect to them. The FSRA’s Directive-making processes operate at a quicker pace and more flexibly than the ordinance amendment process and, consistent</p>



	<p>with practice in other jurisdictions, it is preferable to reallocate the responsibility for keeping some technical standards up to date, to the FSRA.</p> <p>(iv) As a matter of proper governance, the responsibility for making credit risk decisions should at all times rest with the senior management of a bank. The current situation in which credit decisions with a value in excess of SHP 150,000 require a statement of non-objection from the regulator encourages moral hazard and carries with it the risk that it might be used by regulated firms to avoid accountability in relation to poor credit outcomes. As a matter of principle, senior management of a bank should at all times own the consequences of their decisions.</p>
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In designing this policy the Economic Development portfolio consulted with the three licensed firms on St Helena, with feedback taken into account.

## 2 Policy Outline

### Detailed description of proposed changes

22. Table 2 below provides, the detail of the legislative changes needed to take forward the policy objectives.

**Table two: Required legislative changes**

Enhancing the attractiveness of St Helena as a place to do business	
FSR section 2	Revoke section 2 ("Service to eligible customers"), which currently limits regulated firms to serving local customers and Saint Helenians living overseas.
FSO section 9(10)	At present s.9(10) enables the FSRA to disapply provisions of the FSO and FSR in relation to <u>an</u> overseas insurer that wishes to apply for a licence in St Helena, where that insurer is already licensed overseas and is subject to adequate regulatory supervision in its home jurisdiction. This provision is currently used to facilitate the provision of specialist insurance cover. This policy will expand s.9(10) to cover all types of financial services firms, not just insurers.
FSO section 4	Amend s.4 of the FSO to introduce a power for the FSRA to waive or modify a provision of a Directive that applies to regulated firms that carry on a given regulated activity. This power would enable the FSRA to tailor its regulation to the business models of new entrants to the market, such as early-stage or innovative businesses, rather than apply a "one size fits all" approach to all firms.

<b>Enhancing consumer protection</b>	
New FSO section	Amend the FSO to introduce 12 “Principles for Businesses”, being a set of high-level, conduct and ethical principles for all regulated firms. The intention is that the Principles will provide a means for both consumers and the FSRA to hold regulated firms and their management to account for their conduct. The Principles would provide the bedrock for the further development of consumer protection legislation in St Helena. A draft of the proposed Principles appears in Annex 1 to this paper.
FSR section 3	Amend s.3 to give the FSRA a duty to positively approve any new pension scheme (as opposed to not objecting to its sale).
FSO section 2 and section 19	Amend s.2 and s.19 to modify the definition of “client’s money”.
FSR section 4	Amend s.4 to add detail to the client money segregation requirement, to specify the nature and content of the legal documentation that is required to support client money segregation, to clarify the circumstances in which client money can be withdrawn from a designated bank account, and to clarify that the client money segregation requirement applies to estate agents, legal practitioners and accountants (in addition to FSRA-licensed firms).
<b>Reinforcing governance standards</b>	
FSO section 21	<p>Amend section 21 to:</p> <ul style="list-style-type: none"> <li>i. Introduce an obligation on regulated firms to ensure that the individuals that they appoint to act as directors and managers are fit and proper</li> <li>ii. Clarify that the fit and proper standard applies on a continuing basis, and not only at the time of appointment</li> <li>iii. Amplify the content of the fit and proper standard, such that in considering whether to approve an individual as “fit and proper”, the FSRA may have regard to whether the individual has the skills, qualifications and experience required to perform the regulated function, (i.e., whether they are competent)</li> <li>iv. Clarify that the FSRA may withdraw its approval for an individual previously approved as “fit and proper” if it considers, and can</li> </ul>

	<p>demonstrate, that the individual in respect of whom approval was given no longer satisfies the criteria for approval</p> <p>v. Require the FSRA to establish a list of functions and positions to which the fit and proper regime applies</p> <p>vi. Require the FSRA to issue a code of conduct for persons approved by the FSRA as being fit and proper</p> <p>vii. Introduce an obligation to require an approved individual to notify the FSRA without delay of any matter relevant to his/her continued status as a fit and proper person, and for a regulated firm to report the following matters to the FSRA without delay: when an individual has ceased to perform the functions of an approved individual; the reason why the individual has ceased to perform those functions; and any disciplinary action taken in relation to the individual's performance of those functions</p> <p>viii. Include a consequential amendment, enabling the FSRA to charge a fee for the consideration and processing of an application to become an approved person</p>
<b>Improving the effectiveness of our regulatory framework</b>	
FSO section 20	<p>Amend s.20 to require a regulated firm to notify the FSRA in writing immediately when it becomes aware that:</p> <p>i. It is in material breach of the FSO, the FSR or any FSRA Directives</p> <p>ii. A material operational risk event has occurred, such as an IT system failure, error or outage, or a data security breach</p>
FSR section 9(3)	<p>Revoke s.9(3) to remove the requirement for a bank to obtain a statement of non-objection from the FSRA for any to loan or investment that it proposes to make and which exceeds SHP 150,000 in value.</p>
FSR section 11	<p>Amend s.11 to require a bank to:</p> <p>i. Risk-rate every exposure and maintain a written record of the risk-rating</p> <p>ii. Review the risk-rating of every exposure at least annually, or more frequently where it becomes aware of a change of circumstances that has a bearing on the current risk-rating of that exposure, and to maintain a written record of the risk-rating review</p>

	<p>iii. Maintain a written record at a portfolio level showing the distribution of risk in that portfolio</p> <p>The purpose of these changes is to enhance risk management controls in banks.</p>
FSR section 6(1) and (2)	<p>Amend s.6 to require a bank to:</p> <ul style="list-style-type: none"> <li>i. Submit to the FSRA on a quarterly basis, a “New Exposures” report, in a form to be determined by the FSRA, providing information on new lending and investment exposures (not just “large exposures”) entered into by that bank in the preceding quarter</li> <li>ii. Submit to the FSRA on a quarterly basis, a “Credit Quality” report, in a form to be determined by the FSRA, providing information on the distribution of credit risk in a bank’s lending portfolio and its provisioning at a portfolio level for impaired and past due loans</li> <li>iii. Submit to the FSRA on a monthly basis, a “Deposit Activity” report, in a form to be determined by the FSRA, providing week-on-week data about a bank’s deposit inflows and outflows</li> <li>iv. Submit to the FSRA on an annual basis a report from a suitably qualified, independent professional, as to the accuracy and completeness of the regulatory returns submitted to the FSRA under section 6(1) and 6(2)</li> </ul> <p>The purpose of these changes is to improve both a bank’s and the FSRA’s visibility as to trends in the credit portfolio and deposit book of each bank.</p>
FSO section 18	<p>Amend s.18 to require the FSRA to issue Directives in relation to liquidity risk management standards for banks to give effect to relevant parts of BCBS “Principles for Sound Liquidity Risk Management and Supervision, 2008”</p> <p>The purpose of this change is to facilitate the modernisation of local regulatory standards through the use of FSRA Directives in addition to Ordinance-level changes.</p>
FSR section 8(2) and (3)	<p>Amend s.8(2) and 8(3) to require the FSRA to issue Directives in relation to liquidity monitoring tools for banks and the holding of high-quality liquidity assets, and more generally to give effect to relevant parts of BCBS “Basel III: Liquidity Coverage Ratio and Liquidity Risk Monitoring Tools, 2013”</p> <p>The purpose of this change is to facilitate the modernisation of local regulatory standards through the use of FSRA Directives in addition to Ordinance-level changes.</p>

FSR section 7	<p>Amend s.7 to give the FSRA a power to add to the definition of “Own Funds” and to specify the associated calculation methodology</p> <p>The purpose of this change is to facilitate the modernisation of local regulatory standards through the use of FSRA Directives in addition to Ordinance-level changes.</p>
FSO section 22	<p>Amend section 22 to provide that:</p> <ul style="list-style-type: none"> <li>i. The FSRA’s information gathering powers in relation to a relevant business and members of its group include businesses that are not licensed by the FSRA, whether in St Helena or overseas, and all business activities conducted by a company that is a relevant business regardless of whether those business activities are regulated activities</li> <li>ii. The FSRA’s information gathering powers in respect of other members of a licensed firm’s group may be exercised where reasonably required in the performance of its duties under the FSO</li> </ul> <p>The purpose of these changes is to recognise that risks or financial problems in other parts of a licensed firm’s group or business can have a significant impact on the health and stability of the FSRA-licensed business and therefore the FSRA’s information gathering powers should extend beyond the licensed activity (as is the case in the UK regulatory regime).</p>
FSO section 24	<p>Amend s.24 in relation to the FSRA’s powers to conduct investigations, to make changes corresponding to those outlined above in relation to s.22</p>
FSO section 27	<p>Amend section 27 to:</p> <ul style="list-style-type: none"> <li>i. Better enable the FSRA to conclude cooperation agreements with foreign regulators and foreign authorities, establishing procedures for the exchange of information</li> <li>ii. Better enable the FSRA to assist, exchange information or co-operate with foreign regulators and authorities for the purposes of any investigation or supervisory activity being undertaken by the FSRA or similar activity being undertaken by the foreign authority or regulator</li> <li>iii. Clarify that the FSRA may cooperate with a foreign regulator or foreign authority under this section even in cases where the conduct under investigation would not constitute a contravention of the laws of St Helena</li> </ul>

	<p>iv. Record that the FSRA may exchange information with domestic authorities in St Helena where necessary for the discharge of its, or their, statutory responsibilities, with domestic authorities defined non exhaustively to include the Commissioner for Income Tax, Royal St Helena Police, HM Customs, the Money Laundering Regulatory Authority, the minister with responsibility for finance and the minister with responsibility for financial services</p> <p>v. Provide that, where a foreign regulator informs the FSRA of a suspected contravention of the FSR or FSO or any provision made under it, the FSRA must take appropriate action and inform the foreign regulator of the outcome of the action</p>
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23. In relation to some changes outlined above, their purpose is corrective in nature. In most cases the proposed legislative changes are those that are considered necessary to fix difficulties in the practical operation of the current rules. These changes go as far as is necessary to fix the operational issues, but no further.

24. In relation to proposals to enhance the attractiveness of St Helena as a place to do business, the proposed changes take the form of “enabling” powers. They do not, in and of themselves, impose any costs on regulated firms or any other parties. As noted above, the key change (revocation of the local customers only restriction) is designed to encourage new firms to set up business in St Helena, with a view to using St Helena as a location from which to provide services to customers in other parts of the world. It might even encourage existing local firms to expand their horizons. There is no obligation on firms to avail of the option to provide products and services to overseas customers, and those that choose to do so will need to put in place appropriate risk management and other operational arrangements. Firms will be expected to discuss their plans to serve overseas customers with the FSRA before launch, and they will continue to be prohibited from dealing with customers in countries that are subject to UK or multilateral financial sanctions.

25. The other aspect of the proposals to enhance St Helena’s commercial attractiveness relates to the FSRA’s licencing powers and its ability to flex the regulatory framework according to the nature of the business of potential new entrants to the market. Currently, the FSO and FSR impose a “one size fits all” approach to regulating all firms, except overseas insurance companies providing cross-border services. This approach to regulation and licensing in turn acts as a disincentive to (i) start-up, early-stage or innovative businesses that might wish to establish a presence in St Helena, and also to (ii) cross-border service provision by established overseas businesses.

26. In the latter case, the proposed change reflects the reality that many established overseas regulated businesses are likely to be reluctant to establish a compliance programme specifically for St Helena’s regulations and to submit to full oversight by the FSRA. It is not envisaged that the extended power to rely to some extent on supervision by the regulator in the home country of an overseas firm will be used routinely. Rather, its principal purpose is to facilitate the provision of financial services that are not currently provided, or not sufficiently provided, by local regulated firms.

27. In the former case, as is also so in the UK, it is important that prospective new entrants to the market have the ability to apply to the FSRA to waive or modify a provision of an FSRA Directive. In order to obtain a waiver or modification, a firm will need to demonstrate to the FSRA that compliance with the Directive provision is unduly burdensome or that compliance will not achieve the purpose for which the Directive provision is intended, and that a waiver or modification will not prejudice the interests of consumers. The purpose of the amendment is to facilitate the tailoring of the FSO and FSR regulatory framework to the business models of start-up, early-stage and innovative businesses.
28. SHG consulted on proposals to introduce 12 “Principles for Businesses”, being a set of high-level standards of conduct and behaviour which regulated firms and their management would be required to follow. The draft Principles that we propose to include in the FSO are set out in Annex 1 to this paper. The Principles closely resemble those that have been in place in the UK for the last 25 years. The current regulatory framework in St Helena does not contain any conduct or behaviour standards, and the Principles are a means to introduce a baseline level of acceptable behaviour into the market. This would in turn:
- (i) Provide a means for the FSRA to hold management to account for their conduct
  - (ii) Serve as an important piece of regulatory architecture, which would provide the FSRA with a clear legal basis for writing further rules and guidance to govern conduct and protect consumers interests
  - (iii) Provide a means for consumers to hold firms to account for their behaviour towards consumers (e.g., where firms mislead consumers, provide them with poor advice, treat them unfairly, or provide them with poor value products) – at present, consumers of financial services products and services in St Helena have no legal safeguards that enable them to hold regulated firms to account for any of these things.
29. The FSRA has confirmed that it intends to issue supporting guidance when the Principles come into force.

## Annex 1: the Principles for Businesses

### **The Principles for Businesses**

- 1.  
Integrity** A relevant business must conduct its business with integrity.
- 2.  
Skill, care and diligence** A relevant business must conduct its business with due skill, care and diligence.
- 3.  
Management and control** A relevant business must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 4.  
Financial prudence** A relevant business must maintain adequate financial resources.
- 5.  
Market conduct** A relevant business must observe proper standards of market conduct.
- 6.  
Customers' interests** A relevant business must pay due regard to the interests of its customers and treat them fairly.
- 7.  
Communication with clients** A relevant business must pay due regard to the information needs of its customers, and communicate information to them in a way which is clear, fair and not misleading.
- 8.  
Conflicts of interest** A relevant business must manage conflicts of interest fairly, both between itself and its customers, and between customers.
- 9.  
Customers: relationships of trust** A relevant business must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
- 10.  
Clients' assets** A relevant business must arrange adequate protection for clients' assets when it is responsible for them.
- 11.**



**Relations with regulators**

A relevant business must deal with its regulators in an open and cooperative way, and it must disclose to the Regulatory Authority appropriately anything relating to the relevant business of which the Regulatory Authority would reasonably expect notice.

**12.****Fair value for retail customers**

A relevant business must ensure that its products and services for retail customers provide fair value.

For the purpose of Principle 12:

- (a) value is the relationship between the amount paid by a retail customer for a product or service and the benefits they can reasonably expect to get from the product or service; and
- (b) a product or service provides fair value where the amount paid for the product or service is reasonable relative to the costs of providing it and the benefits of the product or service.