CODE OF PRACTICE – COMPANY DIRECTORS

Made: 3 July 2009

Coming into operation: 1 August 2009

This Code of Practice is published by the Guernsey Financial Services Commission ("the Commission") under section 35 of The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 ("the Law"). It applies to:

> individuals and companies who, in or from within the Bailiwick of Guernsey and by way of business, act as directors (whether or not called directors) of companies (whether or not incorporated in the Bailiwick of Guernsey), and
>
> companies incorporated in the Bailiwick of Guernsey which by way of business act as directors (whether or not called directors) of other companies (whether or not incorporated in the Bailiwick of Guernsey)

where, in either case, the directorship is not exempted from regulation by any of the provisions of section 3 of the Law.

There are separate codes for Corporate Service Providers and Trust Service Providers.

This Code attempts to set out sound principles for company directors but is not a statement of the law. A failure to comply with this Code does not automatically make a director liable to any sanction or proceedings, but the Court may, and the Commission will, take into account any breach of this Code which is relevant to any decision which either of them has to make. The Commission may amend this Code from time to time after consultation with representative bodies. The guidance notes on some of the principles set out in this Code do not form part of it but are intended to give further information on the reasons behind the Code and the Commission's interpretation of it.

Directors should:

1. Understand and act in accordance with their legal duties and the constitution of the company and seek advice on those when necessary.

   Guidance note:

   This Code does not attempt to summarise the law of any particular jurisdiction on the duties of a director. Principle 1 requires that, in addition to the general duty *of directors to act in good faith and in what they consider to be the best interests of the company, directors must ensure that they understand their duties to each company of which they act as director. That may involve obtaining advice on the law of the jurisdiction in which a company is incorporated or carries on its activities. It also requires directors to understand that the acceptance of instructions from others (acting as "nominee director") is inconsistent with their duties to the company because acting in accordance with those instructions might not be in the company's best interests.*

Principle 1 also requires directors to understand any relevant and applicable anti-money laundering laws, laws relating to the countering of terrorist financing and requirements to prepare and file accounts or other information which apply to the company.

2. Ensure that the board of directors has effective control of the company.

   Guidance Note:

   Principle 2 requires directors to ensure that adequate board meetings are held (not necessarily face to face but in accordance with the memorandum and articles of association or incorporation of the company and the applicable law) and that the board has sufficient information to make its decisions. Directors must give continuing consideration to the company's financial position, for example before authorising any major expenditure or distribution or the declaration of a dividend.

3. Treat the company as a separate legal entity from its shareholders, directors and others and avoid conflicts of interest with it or deal with them in accordance with the company's articles of association.

4. Know who owns the company in accordance with The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations 2007 and the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing ("the Handbook").

5. Know the company's business and finances and have full and up to date information on them.

6. Ensure that the company keeps proper accounts and records, observes the minimum record retention periods under any applicable laws, and files accounts and returns as required by law.

7. Company Directors must both themselves comply with, and ensure that any company of which they are a director complies with, The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 and the Handbook (as amended from time to time).

8. Consider whether to resign from office and/or to notify the Commission of the circumstances if they believe that the company is being used for illegal purposes, trading wrongfully or breaking the law in other ways.

9. Ensure that they have adequate experience, expertise and resources to enable them to discharge their responsibilities as directors.

10. Ensure that the basis on which they are to be remunerated is agreed or recorded in writing.

11. Co-operate fully with any regulatory or other authority which is entitled to information about the company's affairs.

12. Not attempt to avoid those responsibilities by purporting to contract out of them or assigning them to others.

Guidance Note:

Principle 12 is not intended to prevent directors from delegating to the extent permitted by the applicable law, nor from benefiting from indemnities in a company's articles of association. However, directors must appreciate that delegation to others does not absolve them from ultimate responsibility for the company's affairs.