GUERNSEY
FINANCIAL
SERVICES
COMMISSION

GUIDANCE ON CORPORATE GOVERNANCE IN THE FINANCE SECTOR IN GUERNSEY

INTRODUCTION

This paper has been produced in response to requests from the finance sector to provide guidance on the Commission's corporate governance expectations as they apply to all financial services businesses. It outlines what the Commission considers to be basic requirements for a sound corporate governance regime for the finance sector in Guernsey and details those areas that every Director[1] and manager of a finance business is expected to consider. This paper is not intended to be prescriptive, but is intended to provide direction and principles from which an approach to corporate governance appropriate to the circumstances of an individual organisation can be developed and implemented. An organisation's approach to corporate governance will reflect ownership, legal and operating structures.

The guidance applies to all regulated financial services businesses in the Bailiwick of Guernsey and failure to meet these basic standards will be taken into consideration by the Commission in determining whether licensees or individuals are fit and proper. It should be taken to apply as follows to each specific sector:-

- Section 36C of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 requires banks, inter alia, to review, not less than once every financial year, whether they have in place control systems which are effective to ensure the responsibilities and conduct of the bank's Board of Directors with respect to corporate governance principles. This guidance provides advice on what the Commission sees as banks' responsibilities and their Boards' expected conduct with respect to corporate governance principles.

- Businesses holding full fiduciary licences should consider this guidance in relation to their compliance with legal obligations such as the "four eyes" criterion and the relevant provisions of the Codes of Practice for Corporate Services Providers, Trust Service Providers and Company Directors issued under section 35 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000.

- Licensed insurers will meet the standards laid out in this guidance if they comply with their obligations under the Licensed Insurers' Corporate Governance Code of 4 July 2003 issued under the provisions of section 78 of the Insurance Business (Bailiwick of Guernsey) Law, 2002.

- Businesses holding insurance managers' licences and/or intermediary licences should consider this guidance in relation to their compliance with Schedule 4 to the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 and with the relevant provisions of the Codes and Regulations issued under that law.

- Firms licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 should consider this guidance in relation to their compliance with the relevant provisions of Part 4 of the Licensees (Financial Resources, Notification, Conduct of Business and Compliance) Rules 1998.

[1] In the case of partnerships, the term "director" in this paper also applies to partners and the term "Board of Directors" applies to the partners.

Corporate governance refers to all those measures required to effectively oversee the direction and management of organisations and encompasses setting, controlling, monitoring and reviewing strategy, objectives, corporate values, risk management, delegation of responsibility and accountability, transparency and ethical behaviour.

The effectiveness of the approach to corporate governance by directors and management has a critical influence on each firm's, and as a consequence on the finance sector's, viability. Good corporate governance practice improves safety and soundness through effective risk management and creates the ability to execute strategy and achieve business objectives in a manner that promotes confidence and protects the interest of stakeholders. The nature of a stakeholder will vary according to the type of financial services business but could include, for example, shareholders, depositors, policyholders, employees, creditors and clients.

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General Responsibilities of the Board of Directors

The Board of Directors ("the Board") is responsible for the corporate governance of the organisation. Members of the Board should be proactive in recognising and understanding the risks the organisation faces in achieving its business objectives and should demonstrate effective and prudent management of those risks.

The Board should ensure that the organisation's operations are conducted reasonably and within the framework of any applicable laws, regulations, rules, guidelines and codes as well as established policies and procedures.

Risk Management

The Board and management should analyse existing and prospective business, products and services to identify and measure the types and significance of the current and potential risks to be managed and controlled, both individually and in the aggregate. The Board and management should develop and implement appropriate and prudent risk management policies and procedures and monitor their effectiveness through timely, accurate and complete information systems.

Internal Control Procedures

The Board should establish internal control procedures that are, in the Board's opinion, necessary and sufficient for the purposes of managing operational risks and conducting the organisation's business having regard to its size, nature and complexity.

Duties of Directors

The Board should ensure that collectively its members have sufficient expertise to understand and challenge the important issues in relation to the operation and control of the organisation.

Each Director, in exercising the powers of a Director and discharging the duties as a Director, should act with honesty, integrity and in good faith with a view to the best interests of the organisation and its stakeholders.

Composition of the Board of Directors

The Board should regularly review its composition, taking into account the nature, scale and complexity of the business, and the requirements of any applicable laws, regulations, rules, guidelines and codes.

Self Assessment

The Board should regularly assess and document whether its approach to corporate governance achieves its objectives and, consequently, whether the Board itself is fulfilling its own responsibilities. The Board should review the effectiveness of its overall approach to governance and make changes where that effectiveness needs to be enhanced. In carrying out this review the Board should assess whether the organisation's control environment is appropriate and effective, taking into account the nature and scale of the business, its approach to governance, management and style of communication, organisation structure, resource availability, procedures and controls.

Guernsey Financial Services Commission
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