GIFCS

# GIFCS Regulated Corporate Directors: Good Practice

## Introduction

### The role of Corporate Directors

The role of a Director is critically important, and comes with significant duties. Whilst globally the majority of directorships are held by individual natural persons, some directorships are held by corporate entities. Director duties and statutory director responsibilities are a constant, regardless of whether the role is fulfilled by a natural person, or a corporate entity.

Corporate Directors are typically used for ease of administration and continuity. For example they remove the need to appoint and register new natural person Directors or change bank and investment mandates as staff rotate, remove the risk of decision making delays if natural person directors are on holiday or ill and provide continuity to clients that the same entity is always servicing them.

GIFCS recognises the importance of Regulated Corporate Directors. If not overseen properly, Corporate Directors can give rise to uncertainty as to where responsibility lies. This paper seeks to set down some principles of good practice as part of a Corporate Director oversight regime.

### Fears about Corporate Directors

When a Corporate Director is licensed and supervised under a regulatory law, oft-cited fears and criticism regarding transparency and accountability will typically fall away because:

1. the Corporate Director is subject to regulatory oversight and must maintain compliance with its licensing criteria (for example conducting business with integrity and skill, probity, competence, experience and soundness of judgement);
2. regulators can and do enforce against individuals who make up the boards of the corporate director when they fail to maintain compliance with licensing criteria;
3. all changes to the composition of the board of a corporate director are subject to the same regulatory oversight as the board of any other licensed entity;

4. the beneficial ownership of the client companies that the corporate directors serve on must be known to the licensed corporate director and be declared to the relevant government agency in line with each jurisdictions beneficial ownership legislation; and
5. as a regulated entity, they must comply with relevant Financial Crime (Anti-Money Laundering and Countering Financial Terrorism) legislation.

In summary, if an issue arises surrounding the actions of a regulated Corporate Director, the Regulatory Authority looks through the Corporate Director to identify the persons who made the decision and holds the board of the Corporate Director responsible.

GIFCS recognises that director duties, and associated statutory responsibilities, are a constant, regardless of whether a Director role is fulfilled by a natural person, or a corporate entity.

## Good Practice

Given the crucial role Corporate Directors can play, and the weight of responsibilities upon them, GIFCS has drawn upon the supervisory experience of its members and identified a number of key areas of best practice.

### In the Beginning

Set client expectations at the beginning of a new relationship about how the Licensee uses a Corporate Director, i.e. that it is not a rubber stamp of client demands. Making clear that the Corporate Director will not acquiesce to every client demand, it is not acting as a nominee or proxy for the beneficial owner, rather that it will be actively involved in the decision-making process, avoids difficult client relationships later down the line.

Agreements to be signed and dated, setting out the reason for establishing the arrangement and detailing whether services are provided for a fee or are unremunerated.

Boards of client companies to be adequately constituted and include individuals who hold professional qualifications. ACCA, ACA, Lawyers, CISI, ICSA, IOD and STEP are some of the most common professional qualifications for individuals who make decisions on behalf of Corporate Directors. This professional expertise can enhance governance practices on the boards of private companies.

### In Decision-making

Corporate Directors to approach decision-making with the same duties as Natural Person Directors and act in the best interests of their Client Companies.

The quality of decision-making can be assessed in a number of ways including:

- whether the decision-makers have sufficient knowledge in respect of the decisions made and take appropriate additional external advice where needed;
- the length of time taken to make a decision (from the request received or idea mooted);
- whether the financial position of a client company was assessed prior to making decisions that authorise major expenditure. This would include ensuring client company financial statements are up to date; and
- whether potential conflicts of interest were considered, mitigated and recorded.

All decision making must first include identification and verification of the source of funds and source of wealth, and a sound understanding of the purpose and rationale for the specific activity or transaction under consideration.

If the Corporate Director has authorised signatories (inside or outside the jurisdiction within which it is operating), the Board of the Corporate Director should at all times be aware of the appointments it holds as Director and be able to demonstrate that the activities or decisions taken on its behalf by the Authorised Signatory were in line with its own policies, procedures and controls.

**In Record Keeping**

Corporate Directors to demonstrate that they have exercised independent judgement or given decisions meaningful consideration. This can be achieved through the rationale for the decision (including how the decision was made in the Client Companies best interest) being evident in minutes, correspondence or decision making documentation.

Corporate Directors, alongside any other regulated entity, to keep and maintain accurate records. Financial records are sufficiently detailed in setting out the transaction history of the client company so that, at any time, the financial position of the client company can be determined with reasonable accuracy.

**In Dealing with Third Party Directors**

Ensure that Third Party Directors (often representatives of the Ultimate Beneficial Owner/UBO) do not have a controlling influence, and are not treated in a deferential way. Be able to evidence that the Third Party Director's advice was challenged, and that the Corporate Director was not acting as a nominee of the UBO but was acting with independent judgement and exercising reasonable care, skill and diligence.

**In Review**

Check that the staff that make decisions on behalf of the Corporate Director are adequately skilled and experienced and have sufficient time to devote to their duties. If the Licensee's business model has changed, the Licensee should not assume that its staff's experience continues to be relevant and appropriate.

Review how many directorships are held by the Corporate Director. Some directorships will clearly take considerably more time and expertise than others. Equally, some licensees will have strength and depth in the infrastructure supporting the Corporate Director (for example large administrative teams). Whilst there is no global standard mandating the maximum number of board appointments that a Corporate Director could hold, it is expected that a Regulated Corporate Director would be adequately resourced to fulfil its functions with prudence and professional skill appropriate to the nature and scale of activities.

Review the Corporate Directors Authorised Signatory List. This goes beyond simply checking that the individuals are still employed at the Licensee, and considers whether the parameters of what the Authorised Signatories can decide are clear and that the staff making those decisions can continue to be able to act in this role.

**In the End**

Continue to review whether the provision of corporate directors is appropriate having regard to the nature and operations of the client company.

**Group of International Finance Centre Supervisors**
**May 2020**