Guernsey Financial Services Commission

FINANCE SECTOR

CODE OF CORPORATE GOVERNANCE

Amended February 2016

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INTRODUCTION

What is the GFSC Finance Sector Code of Corporate Governance?

The economic and financial crisis, which came to a head in 2008-2009, triggered widespread reappraisal locally and internationally of the effectiveness of systems of governance. The purpose of the GFSC Finance Sector Code of Corporate Governance ("the Code") is to provide both Boards of locally regulated financial services businesses and individual directors with a framework for sound systems of company governance and, help them discharge their duties efficiently and effectively. **Ultimately, corporate governance is about the behaviour of Boards and their directors.**

The Code provides a set of Principles and Guidance, but is not intended to be prescriptive; rather it is a formal expression of the components of good corporate practice, against which shareholders and Boards, as well as the Commission, can better assess the degree of governance exercised over companies in Guernsey's finance sector. Each business's approach to corporate governance should reflect its legal and operating structure, as well as the nature, scale and complexity of the business. It is not suggested that 'one size fits all'. The GFSC recognises that the differing nature, scale and complexity of businesses will lead to different approaches to meeting the Code. Non-compliance with the Principles does not automatically make a company subject to the Code liable to any sanction or proceedings. Indeed, the nature, scale and complexity of a business might mean in some cases that a company cannot meet some or all of a Principle. For example, collective investment schemes do not usually have their own business continuity plans. The GFSC will take into account the way in which and the extent to which companies have adopted the Principles in their policies, procedures, controls and practices.

The Code does not in any way reduce or otherwise change the obligations or enforceability of any enactment or other document. The Code is not intended in any way to codify or amend existing laws or to confer rights which conflict with or add to rights arising at law. In the event of any incompatibility with existing law, the guidance contained in this Code will be disapplied and law will prevail to the extent of any incompatibilities.

Corporate governance will continue to evolve internationally and therefore the Code will be continuously reviewed and updated. In addition, interpretation of the Code will also evolve as it will need to take account of expectations of changing developments in corporate governance. The Code is a living document.

Who is covered by the Code?

The Code provides a framework which applies to all companies which hold a licence from the GFSC under the regulatory laws or which are registered or authorised as collective investment schemes ("funds")* under (a) below. The regulatory laws are:

(a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987;

* The Code does not apply to any underlying SPVs or investment holding companies of funds.

(b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994;

(c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000;

(d) the Insurance Business (Bailiwick of Guernsey) Law, 2002 (please note that only Appendix 3 of the Code applies to persons licensed under this law ("Licensed Insurers"));

(e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

The Code does not cover entities licensed under the above Laws which are Guernsey branches of foreign domiciled companies or which are partnerships.

Companies which report against the UK Corporate Governance Code or the Association of Investment Companies Code of Corporate Governance are deemed to meet this Code.

How does the Code work?

The Code is a guidance document and is structured around a set of **8 Principles** and additional **Guidance** on how to meet the Principles[1]:

- **Level one** – represents **Principles** of good corporate governance and sets out expected standards for Boards. The Principles are included in bold type in blue boxes. The application of the Principles will be dependent on the nature, scale and complexity of the entities. For example, certain Principles may not be fully appropriate for some investment sector entities, and some further guidance is provided in these instances in Appendix 1 to the Code.

- **Level two** – provides **Guidance** (and some statements) on how to meet the Principles. The GFSC recognises that, due to the differing nature, scale and complexity of companies, there may be other ways by which the Principles can be met.

Companies should prepare a self assessment in order to assist the Board in its consideration of the Code. The extent of the self assessment will need to reflect the nature, scale and complexity of the licensee. The Code should be considered periodically at a Board meeting and the discussion minuted.

When did the Code become effective?

The GFSC issued the Code in final form on 30 September 2011, it was amended on 18 February 2016 by the addition of Appendix 3.

[1] Please note that Appendix 3 which relates only to Licensed Insurers contains only principles of good corporate governance and does not contain guidance which relates to those principles.

The Code came into effect on 1 January 2012. Companies need to be in a position to discuss their governance practices with the GFSC. The GFSC will require an assurance statement from companies confirming that the directors have considered the effectiveness of their corporate governance practices and are satisfied with their degree of compliance with the Principles set out in the Code, or the alternative codes accepted by the GFSC, in the context of the nature, scale and complexity of the business. The GFSC will liaise with the finance sector on when and how the assurance statements should be provided.

The GFSC's document "Guidance on Corporate Governance in the Finance Sector", which was issued in December 2004, was withdrawn with effect from 1 January 2012.

Code of Corporate Governance

PRINCIPLE 1. THE BOARD

Companies should be headed by an effective Board of directors ("the Board") which is responsible for governance.

1.1 *Governance structure*
The Board should have a clear governance structure which reflects the demands and complexities of the company's business environment, strategy, company values, standards, risk appetite, internal controls and key policies.

1.2 *Central role of the Chairman*
The role of the Chairman is central to the effective leadership and corporate governance of the company. A Chairman should be elected for each meeting of the Board where there is no standing Chairman.

1.3 *Balance and composition of the Board*
The Board should collectively comprise an appropriate balance of skills, knowledge and competence, taking into account its members' relevant experience, such that the Board as a whole is able to discharge its duties and responsibilities effectively and that no individual or group of individuals can or does unduly dominate the Board's decision making.

Taking into account the size, nature and complexity of the company, the Board may include one or more non-executive directors, including independent non-executive directors where appropriate, in order for there to be a suitable balance of skills.

1.4 *Committees of the Board*
The Board may, but is not obliged to, establish committees to analyse and review specific issues or to carry out functions, and provide advice and recommendations to the Board on them. While the Board may delegate powers and authority to committees, the Board will retain ultimate responsibility for the actions of committees, with such committees being under an obligation to report back to the Board.

1.5 *Delegation to management*
The Board should ensure that a clear and sufficient senior management structure is in place and should determine the powers and duties entrusted to management to enable them to perform their duties effectively. Such delegation does not absolve the Board from overall responsibility for the sound governance of the company.

1.6 *Board meetings*
The Board should meet sufficiently often to ensure that it fully discharges its duties in an effective manner.

PRINCIPLE 2. DIRECTORS

Directors should take collective responsibility for directing and supervising the affairs of the business.

2.1 ***Directors' duties***

Directors have a duty to operate in accordance with all relevant legislation and should also operate within a structured framework of specified responsibilities suitable for the particular company.

2.2 ***Legislation and regulation***

Directors have a collective duty to be conversant with applicable legislation, regulation, policy, rules, instructions, guidance and codes of practice to an appropriate level to enable them to discharge their responsibilities.

2.3 ***Strategy***

Directors should take responsibility for company strategy and key policies.

2.4 ***Appointment, induction and re-appointment of directors***

Where appropriate, there should be a procedure for scrutinising nominations for the appointment of new directors to the Board and a suitable induction programme provided to new appointees. The Board should also satisfy itself that plans are in place for the orderly succession of its members.

2.5 ***Commitment***

Prospective directors should confirm to the Board that they have sufficient understanding and time available to discharge their duties effectively, taking into account the number and importance of their other commitments.

2.6 ***Provision of information and support for the Board***

The Board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties, facilitate decision making and allow for effective monitoring and control of company performance.

2.7 ***Performance evaluation***

The Board should regularly evaluate the performance of its members and the effectiveness of its actions.

2.8 ***Training and development***

All directors should regularly update and refresh their skills and knowledge.

PRINCIPLE 3. BUSINESS CONDUCT AND ETHICS

All directors should maintain good standards of business conduct, integrity and ethical behaviour and should operate with due care and diligence and at all times act honestly and openly.

3.1 *Conflicts, policy and standards*
Boards should establish, implement and maintain an effective conflicts of interest policy which sets out standards of expected behaviour, including, amongst other matters, the treatment of any non-compliance with the policy.

3.2 *Conflicts of interest*
Directors have a duty to avoid, manage or minimise conflicts of interest and should, wherever possible, arrange their personal and business affairs so as to avoid direct and indirect conflicts of interest. Any actual or potential conflicts of interest should be declared to the Board in accordance with legislation and dealt with in accordance with the company's memorandum and/or articles of incorporation or other constitutional documents, or by the other directors as they consider appropriate.

3.3 *Self dealing*
Any transactions between the company and its Board members should take place at arms' length or be disclosed in detail at a Board meeting before the Board considers the transaction. Any conflicted directors should consider abstaining from participating in the decision.

3.4 *Duty to the company*
Directors have a fiduciary duty to act in the best interests of the company.

PRINCIPLE 4. ACCOUNTABILITY

The Board should have formal and transparent arrangements in place for presenting a balanced and understandable assessment of the company's position and prospects and for considering how they apply financial reporting and internal control principles.

4.1 *Strategic business management*
The Board is responsible for overseeing the company's objectives and business plans.

4.2 *Group policies*
The Board of a company which is a member of a group should review any group policies and assess their relevance and applicability to the business and the legal and regulatory environment in which the company operates.

4.3 *Financial reporting*
The Board is responsible for the integrity of the company's financial statements and any other formal information relating to its financial performance, as well as any other statutory information required.

4.4 ***Internal control systems***

The company should maintain a sound system of internal control to safeguard the company's assets and to manage risk, and the Board should regularly review such controls.

4.5 ***Audit and auditors***

The Board should establish formal and transparent arrangements for considering how they apply financial reporting principles and for maintaining an appropriate relationship with the company auditors.

4.6 ***Performance monitoring***

The Board should determine and ensure that relevant monitoring criteria of the company's performance are in place and should regularly evaluate their effectiveness.

4.7 ***Outsourced functions***

The Board retains responsibility and accountability for all material outsourced functions.

4.8 ***Annual business reviews***

The Board should, at least annually, undertake a review of the company's business activities and future prospects. Such reviews should be conducted to the extent appropriate to the current and proposed activities of the company.

PRINCIPLE 5. RISK MANAGEMENT

The Board should provide suitable oversight of risk management and maintain a sound system of risk measurement and control.

5.1 ***Responsibility for risk***

The Board should maintain overall responsibility for the risk management of the company and, where appropriate, should support and be supported by a senior executive of the company who has responsibility for assessing and managing risk.

5.2 ***Risk strategy and policy***

The Board should determine the company's risk appetite and tolerance and developing policies, procedures and controls for identifying, evaluating and managing all significant risks faced by the company.

5.3 ***Risk reviews***

The Board should undertake, at least annually, a review of the effectiveness of the company's risk management, and related policies, procedures and controls.

5.4 ***Contingency planning and testing***

Companies should have in place properly constructed business continuity and contingency plans to safeguard against disruption of their operations and services and to mitigate risk. The Board should review these plans at least annually.

PRINCIPLE 6. DISCLOSURE AND REPORTING

The Board should ensure the timely and balanced disclosure to shareholders and/or to regulators of all material matters concerning the company.

6.1 ***Statutory disclosure and regulatory reporting***

The Board has a duty to ensure that information is made available as required by applicable rules, regulations and codes and that all statutory and regulatory reporting deadlines are met.

PRINCIPLE 7. REMUNERATION

The Board should ensure remuneration arrangements are structured fairly and responsibly and that remuneration policies are consistent with effective risk management.

7.1 ***Remuneration policy***

Where appropriate, the Board should review and set company remuneration policies. Such policies should, wherever possible, have regard for company and individual performance, and should avoid creating incentives that encourage excessive risk taking.

7.2 ***Levels of remuneration***

Levels of remuneration should be sufficient to attract, retain and motivate individuals of the quality required to manage and run the company successfully. Additionally, remuneration of non-executive directors should reflect the time commitment and responsibilities of the role.

PRINCIPLE 8. SHAREHOLDER RELATIONS

The Board should ensure that satisfactory communication takes place with shareholders and is based on a mutual understanding of needs, objectives and concerns.

8.1 ***Communication***

The company should have in place an appropriate communications strategy with shareholders and, where relevant, other third parties. The Board should ensure the provision to shareholders of adequate information on which they may base informed decisions.

8.2 ***Rights of shareholders***

The Board should respect the rights of shareholders, and ensure that facilities are made available for them to exercise their rights.

APPENDIX 1

PRINCIPAL MANAGERS, CLOSED ENDED FUND MANAGERS AND FUNDS

The purpose of this appendix is to acknowledge how the nature, scale and complexity of principal managers, closed ended fund managers and collective investment schemes (funds) in the investment sector influence their ability to meet the Code. (These investment sector entities are collectively defined as "relevant entities" for the purpose of this appendix.)

Corporate governance for the relevant entities may be determined by the constitutional documents of the fund and/or disclosed to investors in the investment particulars.

Investors in funds whose shares may be readily redeemed, transferred or otherwise realised will present different corporate governance demands for a Board of a relevant entity to those whose shares are not readily realisable.

Companies whose shares are held by members of the public will present different challenges for Boards to those whose shares not held by members of the public.

The boards of relevant entities might be comprised entirely of non-executive directors, might not establish Board committees and might not have a permanent Chairman. They do not have senior management or senior executives of their own and delegate significant functions to third party service providers, namely fund administrators.

Principal managers, closed ended fund managers and funds are likely to only need a simple induction programme and plan for the orderly succession of their members.

As shareholders of funds are also the investors in the fund their interests will differ from shareholders of other licensees.

Shareholders of funds may appoint and remove directors. It is also often shareholders rather than the Board which evaluate the performance of the Board's directors and the effectiveness of the Board's actions.

In meeting the rules on dealing within the Licensees (Conduct of Business) Rules 2009, principal managers and closed ended fund managers will be deemed to meet sections 3.2 and 3.3 of the Code.

Relevant entities are unlikely to have their own internal controls – they may rely on their administrators in relation to internal controls. They may also rely on the business continuity and contingency planning of their administrators.

Principle 7 of the Code will normally apply to Boards of relevant entities only in relation to the remuneration of their directors.

APPENDIX 2

BANKS

With reference to section 3.4 of the Code, the board of a regulated banking subsidiary should retain and set its own corporate governance responsibilities, and should evaluate any group-level decisions or practices to ensure that they do not put the regulated subsidiary in breach of applicable legal or regulatory provisions or prudential rules. The board of the regulated banking subsidiary should also ensure that such decisions or practices are not detrimental to:

- the sound and prudent management of the subsidiary;
- the financial health of the subsidiary; or
- the legal interests of the subsidiary's stakeholders.

APPENDIX 3

LICENSED INSURERS

The following more specific principles, rather than the general principles contained in the Code, apply to Licensed Insurers for financial years commencing on or after 1 April 2016. The Commission recognises that there will be different approaches to meeting these principles depending upon the nature, scale and complexity of the business.

Principle A:1 - An insurer's Board is required to set and oversee the implementation of the insurer's business objectives and strategies for achieving those objectives, including its risk strategy and risk appetite, in line with the insurer's long term interests and viability.

Principle A:2 - An insurer's Board is required to:

- ensure that the roles and responsibilities allocated to the Board, Senior Management and Key Persons in Control Functions are clearly defined so as to promote an appropriate separation of the oversight function from the management responsibilities; and
- provide adequate oversight of the Senior Management.

Principle A:3 - An insurer's Board is required to have, on an on-going basis:

- an appropriate number and mix of individuals to ensure that there is an overall adequate level of knowledge, skills and expertise at the Board level commensurate with the governance structure and the nature, scale and complexity of the insurer's business;
- at least one independent non-executive director;
- appropriate internal governance practices and procedures to support the work of the Board in a manner that promotes the efficient, objective and independent judgment and decision making by the Board; and
- adequate powers and resources to be able to discharge its duties fully and effectively.

Principle A:4 - The individual members of an insurer's Board are required to:

- act in good faith, honestly and reasonably;
- exercise due care and diligence;
- act in the best interests of the insurer and policyholders, putting those interests of the insurer and policyholders ahead of his/her own interests;
- exercise independent judgment and objectivity in his/her decision making, taking due account of the interests of the insurer and policyholders; and
- not use his/her position to gain undue personal advantage or cause any detriment to the insurer.

Principle A:5 - The insurer's Board is required to:

- adopt and oversee the effective implementation of a remuneration policy, which does not induce excessive or inappropriate risk taking, is in line with the identified risk appetite and long term interests of the insurer, and has proper regard to the interests of its stakeholders; and

- ensure that such a remuneration policy, at a minimum, covers those individuals who are members of the Board, Senior Management, Key Persons in Control Functions and other employees whose actions may have a material impact on the risk exposure of the insurer.

Principle A:6 - The insurer's Board is required to ensure that there is a reliable financial reporting process, for both public (where applicable) and supervisory purposes, which is supported by clearly defined roles and responsibilities of the Board, Senior Management and the external auditor.

Principle A:7 - The insurer's Board is required to have systems and controls to ensure the promotion of appropriate, timely and effective communications with the Commission and relevant stakeholders on the governance of the insurer.

Principle A:8 - The insurer's Board is required to have policies and procedures to ensure that Senior Management:

- carries out the day-to-day operations of the insurer effectively and in accordance with the insurer's strategies, policies and procedures;
- promotes a culture of sound risk management, compliance and fair treatment of customers;
- provides the Board adequate and timely information to enable the Board to carry out its duties and functions including the monitoring and review of the performance and risk exposures of the insurer, and the performance of Senior Management; and
- provides to the relevant stakeholders and the Commission the information required to satisfy the legal and other obligations applicable to the insurer or Senior Management.

Principle A:9 - The insurer's Board is required to provide oversight in respect of the design and implementation of sound Risk management and internal control systems and functions.

Principle A:10 - The insurer is required to establish, and operate within, effective systems of risk management and internal controls.

Principle A:11 - The insurer is required to have effective Control Functions with the necessary authority, independence, and resources.

Principle A:12 - The insurer is required to have an effective risk management function capable of assisting the insurer to identify, assess, monitor, manage and report on its key risks in a timely way.

Principle A:13 - The insurer should have an effective compliance function capable of assisting the insurer to meet its legal and regulatory obligations and promote and sustain a corporate culture of compliance and integrity.

Principle A:14 - The insurer is required to have, or to have access to, an effective actuarial function capable of evaluating and providing advice to the insurer regarding, at a minimum, technical provisions, premium and pricing activities, and compliance with related statutory and regulatory requirements. (This principle is not applicable to category 5 insurers.)

Principle A:15 - The insurer is required to have, or to have access to, an appropriate and effective internal audit function capable of providing the Board with independent assurance in respect of the insurer's governance, including its risk management and internal controls.

Principle A:16 - The insurer is required to retain at least the same degree of oversight of, and accountability for, any outsourced material activity or function (such as a control function) as applies to non-outsourced activities or functions.

Principle A:17 - The Board should carry out an annual review of the effectiveness of its corporate governance and internal controls.