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CODE OF PRACTICE – CORPORATE SERVICE PROVIDERS

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This Code of Practice is published by the Guernsey Financial Services Commission under section 35 of The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (“the Law”) for the guidance of companies and partnerships carrying on company administration business (as defined below) in or from within the Bailiwick of Guernsey or through a company incorporated in the Bailiwick. There are separate codes for those undertaking trust business or acting as a director as described in sections 2(1)(a) and 2(1)(b)(iii) respectively of the Law.

This Code attempts to set out sound principles of practice for Corporate Service Providers but is not a statement of the law. A failure to comply with this Code does not automatically make a Corporate Service Provider 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.

Each principle is followed by a guidance note which does not form part of the Code but gives further information on the reasons behind the relevant principle or the Commission’s interpretation of it.

1. Definitions

In this Code, the following words have the following meanings:

“the Law”	The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000,
“company administration business”	the activities described in section 2(1)(b)(i) and (ii) of the Law, when carried on by way of business and not exempt from regulation under any of the provisions of section 3 of the Law,
“Corporate Service Provider” or “CSP”	a person carrying on company administration business,
“client”	a person with whom a CSP has entered an agreement to provide services constituting company administration business,

“client company”	a body to or for which a CSP has agreed to provide services constituting company administration business,
“holding company” and “subsidiary”	have the meanings set out in schedule 2 to the Law,
“regulated fiduciary activities”	the activities defined in section 2 of the Law as “regulated activities”, when carried on by way of business and not exempt from regulation under any provision of section 3 of the Law, and
“staff”	includes directors, partners and indirect employees such as temporary or contract staff as well as employees,
“the Commission”	the Guernsey Financial Services Commission, established under The Financial Services Commission (Bailiwick of Guernsey) Law, 1987.

2. Integrity

CSPs should conduct their businesses with integrity and should not attempt to avoid or contract out of responsibilities under this Code.

Guidance note

A breach of this principle will be regarded as being amongst the most serious of breaches. Without limiting its scope, CSPs must deal with clients fairly and communicate information to them in a way which is suitable and not misleading. This will include notification that the CSP is acting as agent or instructing an agent in relation to particular services where that is the case. It will also include keeping directors of client companies sufficiently informed where the CSP is not itself the director.

3. Know your client

CSPs should comply 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”) as amended from time to time. Section 4.6.1 of the Handbook, which includes Commission Rules, requires that, where the verification subject is a company, the identity of the underlying beneficial owner(s) should be verified.

CSPs should know and have regular contact with the directors (including any shadow directors as defined by section 132 (1) of The Companies (Guernsey) Law, 2008) of

client companies, establish the nature of the activities and assets of client companies and ensure that they are informed of any material changes.

Guidance note

The Criminal Justice (Proceeds of Crime)(Financial Services Businesses)(Bailiwick of Guernsey) Regulations, 2007 and the Handbook apply as much to CSPs as to other financial services businesses. Section 13.2 of Chapter 13 of the Handbook provides material specifically for the corporate services sector but CSPs also need to be fully familiar with the whole of the Handbook, The Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law, 1999 and the Regulations referred to above.

4. Clients' best interests

CSPs must treat each client company's best interests as paramount subject to the CSP's legal obligations to other persons or bodies.

Guidance note

Compliance with this principle will require CSPs to act with due care, skill and diligence.

5. Client agreements

CSPs should discuss terms of business with each prospective client and keep a written record of the terms of the agreement with each client, including evidence of the client's agreement to those terms. That agreement should include:

- a clear description of the services to be provided and fees to be charged,
- a record of how and by whom requests for action are to be given,
- a record of any provision for the termination of the agreement and the consequences of termination,
- a description of the CSP's procedure for dealing with any complaints, and
- a statement that the CSP is licensed by the Commission.

Guidance note

The Commission regards the points listed above as central (not exhaustive) in any agreement for the provision of company administration services.

6. Competence and effective management

A CSP should, through its staff:

understand and comply with its contractual and other legal obligations,

identify and act in each client company's best interests and avoid or deal properly with any conflict of interest between clients or client companies or between itself and a client or a client company,

ensure that any person for whom it arranges to act as a director of a client company is fit and proper to do so (within the meaning of paragraph 3(2)(a) to (g) of Schedule 1 to the Law),

keep the affairs of clients and client companies confidential except where disclosure of information is required or permitted by an applicable law or by guidance published by the Commission, or authorised by the person(s) to whom the duty of confidentiality is owed,

keep the funds of each client company separate from each other and from the CSP's own funds,

keep and preserve (so far as appropriate for the CSP's retainer and for at least as long as required by any applicable law) appropriate records including accounting records, company registers, records of material communications with clients, client companies and others and of proceedings at company meetings,

prepare and file returns and accounts as required by any applicable law, unless the agreement with the client provides that the client or client company will do so,

comply with the requirements of The Criminal Justice (Proceeds of Crime)(Financial Services Businesses)(Bailiwick of Guernsey) Regulations, 2007 and of the Handbook, as amended from time to time,

record, investigate and, as appropriate, act on complaints,

satisfy the "four-eyes" criterion, and

record and monitor compliance with the Law and this Code.

CSPs should have effective management and systems and suitably chosen, trained and supervised staff to comply with this principle. CSPs should ensure that the responsibilities and authority of each member of staff are clear and appropriate to his or her qualifications and experience and that staff receive any training which is necessary

for their rôles. CSPs should formulate and keep up to date plans for staff training and development, including training in relation to anti-money laundering and countering the financing of terrorism, and for disaster recovery.

Guidance note

The staff and procedures which a CSP needs to comply with this principle will depend upon the nature and scale of its business. The Commission will in each case consider the CSP's resources and systems as a whole but, for example, it may wish to see evidence of the following in addition to the specific points set out in this principle:

an understanding on the part of staff of the memorandum and articles of association or incorporation (or equivalent documents) of client companies and of both the CSP's duties to client companies and the extent to which the CSP must exercise independent judgement in performing its functions,

anti-money laundering policies, procedures and controls including staff training on those and compliance with them,

procedures documenting the risk assessment both of the CSP's business as a whole and of each of the CSP's business relationships.

up to date records of all client companies including, for example, details of their officers and places of incorporation, and

a diary system or systems to ensure that critical dates are not missed.

The requirement for staff to be suitably qualified and experienced for their responsibilities extends to staff who act as officers of client companies and requires them to understand their duties under the laws of the jurisdiction in which those client companies are incorporated. For example, any member of staff who acts as director of a company incorporated in (amongst other places) England and Wales, Guernsey or Alderney must understand the nature of a director's duties to the company. They must understand that no office of "nominee director" exists because the acceptance of instructions to act in a particular way is inconsistent with a director's duty to act in the best interests of the client company.

The following is an extract from the guidance on the "four-eyes" criterion which has appeared in the Commission's Annual Reports:

"The Commission applies the "four-eyes" criterion and normally requires at least two individuals to direct the business of a licensed/registered institution. It is expected that the individuals will be either executive directors or persons granted powers by, and reporting immediately to, the board. These provisions are designed to ensure that at least two minds are applied both to the formulation

and the implementation of the policy of the institution. The Commission would not regard it as sufficient for the second person to make some, albeit significant, decisions relating only to a few aspects of the business. Both must demonstrate ability to influence strategy and day-to-day policies and their implementation, and both must actually do so in practice. Both persons' judgements must be engaged in order that major errors leading to difficulties for the business are less likely to occur. Both persons must have sufficient experience and knowledge of the business and the necessary personal qualities to detect and resist any imprudence, dishonesty or other irregularities by the other person."

Paragraph 4(1) of Schedule 1 to the Law (which sets out the minimum criteria for licensing) requires that the two individuals fulfilling the "four-eyes" criterion must be "sufficiently independent of each other"

7. Adequate resources

CSPs must maintain and be able to demonstrate adequate financial resources for the nature and scope of their businesses, including adequate professional indemnity insurance cover.

Guidance note

It is of paramount importance that CSPs are solvent and able to meet the risks which they face, for example of a well-founded claim by a client. There is such variation in the size and structure of CSPs and the range of activities undertaken by them that it is impossible to prescribe scales for solvency, capital adequacy and insurance cover which achieve appropriate results in all cases. Each CSP is responsible for assessing the level of resources (including insurance cover) which is necessary to enable it to meet its liabilities as they fall due and to withstand the risks to which it is subject. This will involve consideration of the risks which exist as a result of the nature of the CSP's business and of the extent to which those risks can be avoided or reduced.

The Commission will generally expect CSPs to maintain minimum gross capital of 25% of annual expenditure, where:

"gross capital" means total assets less total liabilities after adjustments,

"total assets" means the aggregate of assets of any type (whether employed in regulated fiduciary or other activities) including fixed assets, current assets (including debtors) and, with the Commission's approval, contingent assets,

"total liabilities" means the aggregate of liabilities of any type (whether arising from regulated fiduciary or other activities), including creditors and provisions for liabilities and charges,

“adjustments” means deductions for intangible fixed assets, debtors arising from sales to associates, any deficiencies where the liabilities of a subsidiary or liabilities of associates of a licensee exceed its assets, and any other assets specified in writing by the Commission, and additions for creditors arising from purchases from associates, other liabilities and subordinated loans specifically permitted in both cases by the Commission,

“annual expenditure” means either:

an estimate of budgeted expenditure for the first 12 months which is submitted to the Commission by an applicant or a licensee which has not yet commenced regulated fiduciary activities , or

the total revenue of any type for the immediately preceding accounting period less profit before appropriations of a licensee and, in the case of a loss before appropriations, the amount of the loss shall be added to the total revenue,

“associate” in relation to a licensee means:

a company in the same group as the licensee,

a company at least one-third of the issued equity share capital of which is beneficially owned by the licensee or an associate, and

any other person whose business or domestic relationship with the licensee or its associate, or with the partners, directors, managers or employees of the licensee or its associate, places the person in a position to exercise significant influence over the licensee which might reasonably be expected to give rise to a conflict of interest in dealings with third parties,

“group” in relation to a licensee means that licensee, any company which is its holding company or subsidiary, and any other company which is a subsidiary of that holding company,

“director” includes any person who occupies the position of director, by whatever name called, and

“manager” means an employee who, under the immediate authority of his employer, is responsible either alone or jointly with one or more other persons for the conduct of the employer’s regulated fiduciary activities.

The Commission will expect CSPs which are companies to have a paid-up share capital of substance, the exact level depending on the business of the individual CSP. The

Commission will consider a lower share capital and a parent company's guarantee for a company whose parent has a higher level of capital, particularly if the parent is itself a regulated financial services institution in the Bailiwick of Guernsey.

The Commission regards suitable professional indemnity insurance as an important aspect of financial resources, and will consider the adequacy of those resources against the background of the CSP's actual and intended activities in each case. Professional indemnity insurance cover needs to include cover against negligence, errors or omissions by the CSP and against any liability it might have for the dishonest acts of its employees. Cover must extend to liabilities which the CSP might incur in any jurisdiction in which it carries on business as a CSP and to liabilities of the CSP's staff who, in the course of their duties to the CSP, perform functions (for example acting as director) in their own names.

The Commission is likely to consider insurance cover to be adequate where it provides annual aggregate cover which matches or exceeds the greater of:

3 times turnover (previous year's turnover or, for new businesses, estimated turnover for the first year) from regulated fiduciary activities, and

£1,000,000.

The Commission regards the level of excess as important and it would be unlikely to regard as acceptable an excess of more than 3% of turnover from regulated fiduciary activities.

The Commission will consider arrangements under group policies or, where the CSP or its parent or ultimate parent is of sufficient stature, for self-insurance.

8. Co-operation with regulatory authorities

CSPs should deal openly and honestly and co-operate with the Commission and any other regulatory authorities to whose supervision they are subject. The attention of CSPs is drawn to sections 14, 21, 39 and 46(2) of the Law. In relation to section 46(2), the Commission would expect to be notified of any of the following events:

significant changes to the information submitted to the Commission as part of an application for a fiduciary licence, for example changes of address or significant changes to the nature of the CSP's business, to its insurance arrangements or to the structure of a group of companies of which the CSP is part,

the grant or refusal of any application by the CSP or any holding company or subsidiary for authorisation to carry on any financial services business in any country, or the revocation of or attachment of conditions to such an authorisation,

the serious or prolonged breakdown of the CSP's administrative systems if that could result in an inability to keep proper records or to comply with any other principle,

the fact that a significant complaint has been made about the CSP or that any complaint about the CSP has not been resolved within 3 months,

a notification to the CSP's professional indemnity insurers, or any payment by the CSP's insurers under its professional indemnity cover,

the commencement of proceedings against the CSP in any country,

the making, or any proposals for the making, of a composition or arrangement with creditors of the CSP,

the presentation of any application to the court for the commencement of any insolvency proceedings, including *désastre*, winding up or the appointment of a receiver, administrator or provisional liquidator, under the law of any country in relation to the CSP or a company which is a subsidiary or holding company of the CSP, or the summoning of any meeting to consider a resolution to wind up the CSP or a subsidiary or holding company of it,

the making of an application to wind up or dissolve any CSP which is a partnership, including a limited partnership or a limited liability partnership,

the appointment of inspectors (however described) by any regulatory authority to investigate the affairs of the CSP or any holding company or subsidiary,

the imposition of disciplinary measures or sanctions against the CSP by any regulatory authority, or

the conviction of the CSP, its holding company or subsidiary or any member of staff of the CSP in any country of any offence relating to financial services, companies or insolvency or involving fraud, dishonesty, money laundering or tax evasion.

Guidance note

The Commission expects CSPs to behave towards their regulators in an open and co-operative manner. The list above is not exhaustive. It is intended to indicate the type of event of which the Commission would expect to be notified but it does not limit the scope of section 46(2) or any other provision of the Law.