



## **Financial Services Act 2008 Guidance on Directorships, Trusteeships and similar Responsibilities held by Directors and individuals in ‘controlled functions’**

### **Status of guidance**

*The Isle of Man Financial Services Authority (“the Authority”) issues guidance for various purposes including to illustrate best practice, to assist licenceholders to comply with legislation and to provide examples or illustrations. Guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.*

### **Relevant legislation and regulatory standards**

This guidance is issued in furtherance of:

- The Authority’s statutory objective to secure an appropriate degree of protection for the customers of persons conducting regulated activities<sup>1</sup>;
- The Authority’s statutory duty to have regard to the reputation of the Island<sup>2</sup>;
- The Licensing Policy Part V – Competence;
- Financial Services Rule Book rule 8.3 “Management controls” which includes that a licenceholder must ensure that staff and other persons carrying out regulated activities carry out their duties in a diligent and proper manner;
- Financial Services Rule Book rule 8.62 “Provision of officers” which includes that an officer of a company must be suitable and competent; and,
- Financial Services Rule Book rule 6.1 “Skill care and diligence”.

### **Effectiveness of management controls, systems and support**

The operation of client vehicles<sup>3</sup> should be subject to the normal management controls of the licenceholder. For example, the recording of decisions and support functions such as accounting, financial transactions, post and e-mail, should be handled through the licenceholder’s office systems.

In many licenceholders, staff at different levels of seniority will be involved in the administration and management of any given client vehicle. Segregation of duties and

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<sup>1</sup> Financial Services Act 2008, section 2(2)(a)

<sup>2</sup> Financial Services Act 2008, Schedule 1, paragraph 3(e).

<sup>3</sup> The guidance follows the GIFCS Standard (see page 5) in using the term “vehicles” as a collective term for trusts, companies, foundations and all other forms for the structuring of client business.

teamwork are necessary in licenceholders where an individual who is a director and/or trustee relies upon the support that they receive.

Where duties are segregated, licenceholders should ensure that:

- Staff and systems deliver the information necessary to support directors or trustees in reaching a decision on a proposed transaction or resolution;
- Timely and accurate management information concerning the vehicle's business, governance and financial position is available to the directors or trustees as context for a decision;
- Systems record the risk profile of each vehicle and draw attention to higher risk vehicles;
- Systems, controls and depth of resources are "sufficient to adequately deal with the risk profile of all clients especially those connected with a higher risk jurisdiction..." in compliance with the requirements of rule 8.3(2)(i); and
- The culture of the licenceholder supports staff who act as director or trustee and who reject a transaction on the grounds of inadequate information or unresolved concerns over risk.

Licenseholders should monitor the effective operation of their systems and controls.

### **Responsibility of Directors and Trustees**

Directors and trustees cannot delegate their responsibilities.

### **Competence**

It is the Authority's expectation that client vehicle directors and trustees will:

- Have the necessary knowledge to understand their responsibilities in relation to the vehicle in question;
- Act with skill care and diligence, appropriately and independently in the best interests of the vehicle;
- Have up to date and accurate information concerning the vehicle's business, governance and financial position;
- Have relevant experience in respect of their responsibilities; and
- Be able to allocate sufficient time to the vehicle to discharge their responsibilities effectively.

### **Learning the role – staff development**

Staff who are new to directorship or trusteeship responsibilities should be given responsibility on a staged basis and with appropriate induction. They should initially be appointed to less active and lower-risk client vehicles and work with experienced colleagues.

### Qualitative factors – the relative complexity and impact of different vehicles

Competence is considered in context. Some vehicles present a greater degree of complexity than others, involve a higher level of activity (for example more frequent transactions) and a greater degree of risk to the wider public. The knowledge and time required vary accordingly.

Directors of companies that are public companies (whether or not they are listed or quoted on a Stock Exchange), collective investment schemes or otherwise open to investment by the public have responsibilities to the underlying investors, as well as to the company itself or the licenceholder. Staff fulfilling directorship roles in respect of such companies should have excellent and relevant specialist knowledge and in particular should have regard to their obligations to investors.

The following table illustrates this principle:

Type	Typical level of specialist knowledge	Financial risk to wider public
Public company	High	High
Collective investment scheme – not a private arrangement	High	High
Closed-ended investment company – not a private arrangement	High	High
Private trading company	Varies	Medium
Private yacht or aircraft owning company	High	Low <sup>4</sup>
Trust - not a collective investment scheme	Medium or High	Low
Private foundation	Medium or High	Low
Private asset or property owning company	Medium or Low	Low

### Listed or quoted companies

Directors of companies which are listed or quoted on a Stock Exchange should be familiar with relevant corporate governance codes or requirements (for example the UK Corporate Governance Code) and should take steps to ensure that companies on which they serve comply with such codes or requirements.

### Time and capability

Having more posts as client vehicle director and trustee means having less time available for each post. However skilled an individual may be, at some point they would no longer be able to adequately discharge their responsibilities. Eventually an otherwise competent person can cease to be competent as a result of being overstretched. This would be to the detriment of

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<sup>4</sup> The table concentrates on financial risk. However there are significant risks to public safety if yachts or aircraft are not properly managed. Similar considerations apply to (for example) the safety of factories or buildings.

securing an appropriate degree of protection for the customers of persons carrying on a regulated activity, and in some cases to the detriment of underlying investors.

Licenceholders should monitor the directorship and trusteeship responsibilities of their staff and be able to satisfy themselves that staff have enough time to properly discharge all their responsibilities; whether these are as directors or trustees of client vehicles, or as directors or managers of the licenceholder itself.

The qualifications, experience and numbers of the staff who support client vehicle directors and trustees should be taken into account in assessing workloads. The Authority may request evidence of such monitoring.

### **Key person risk**

The principles underlying the allocation of directorship and trusteeship responsibilities amongst the staff of a licenceholder should be considered and formally agreed by the board of the licenceholder.

Many licenceholders aim to have at least one of the licenceholder's main board directors sitting as a director on each client vehicle. There are good reasons for this practice. However, in larger businesses, there may come a point at which the practice is no longer viable because of the directors' other management responsibilities. Personal involvement of the licenceholder's directors may become a liability rather than a safeguard.

### **Directors of "corporate officers" (corporate directors and corporate trustees)**

The Authority will hold all of the directors of a corporate trustee or director responsible for the decisions of that corporate officer.

The Authority expects a corporate officer to have at least two individuals in 'controlled functions' serving as directors, and to evidence dual control.

### **Signatories with discretionary powers to sign**

A person acting as a signatory on behalf of a corporate director or trustee, but who is not a director of that corporate director or trustee, should usually only sign at the instruction of the directors. If it is proposed that a signatory can sign without an instruction from the directors, the scope of the power should be clearly set down in the licenceholder's policies and procedures.

## Professional Officers

Generally, Professional Officers have few or no support staff and this should be reflected in a low number of directorships and trusteeships. As a licenceholder, a Professional Officer should monitor and manage his or her own workload.

## Numbers

It should be appreciated that the determination of an appropriate number of posts depends upon a range of factors which affect the nature and responsibilities of the roles, including:

- The effectiveness of management controls, systems and support<sup>5</sup>
- the level of activities of the vehicles;
- the nature of the activities of the vehicles,
- any legal and compliance requirements such as laws relating to health and safety or competition;
- the context in which the work is undertaken, both in terms of the support available and the other demands upon the time of the persons who act as directors.

## Exceptionally inactive vehicles

Where a licenceholder believes that its directorships or trusteeships are for exceptionally inactive vehicles, it should be prepared to make a quantified case for this, including its assessment of the time required in each role. Because of the reputational risk which such situations may pose, the matter may be considered by the Authority's Board.

## International standards

The Group of International Finance Centre Supervisors ("GIFCS") adopted its updated Standard for the regulation of Trust and Corporate Service Providers in September 2014. The GIFCS Standard includes:

*"The Regulator should require that a TCSP is and remains resourced, structured and organised appropriately so that it can manage all vehicles and assets it administers. This requirement should address internal controls, staff capabilities and the numbers and types of appointments to Vehicles which are undertaken by staff, whether in their own name or through corporate directors or other indirect appointments."*

In line with the GIFCS Standard, and the Authority's Licensing Policy<sup>6</sup>, this guidance applies to trusteeships and other posts with analogous responsibilities to those of a director or trustee, such as council member of a foundation.

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<sup>5</sup> See page 1 - effectiveness of management controls, systems and support

<sup>6</sup> Paragraph 3.1.2