



August 2015

Statement of Guidance Corporate Governance

1. Statement of Objectives

- 1.1. The Authority expects the management and direction of a regulated entity to be conducted in a fit and proper manner. The purpose of the Statement of Guidance on Corporate Governance ("the Guidance") is to provide the Governing Body of entities regulated by the Cayman Islands Monetary Authority ("regulated entity") and the Directors of these entities ("Director") with a framework for sound and prudent governance to assist them in fulfilling their duties efficiently and effectively.
- 1.2. This Guidance is not intended to be prescriptive or exhaustive; rather this Guidance sets out the Authority's minimum expectations of regulated entity's corporate governance arrangements.
- 1.3. The governance structure of a regulated entity, and the size and composition of the Governing Body should be adequate for the legal and operational structure of the regulated entity and commensurate with the size, nature and complexity of its business.

2. Statutory Authority

- 2.1. Section 34 of the MAL provides that the Authority may issue rules, statements of principles or guidance:
 - (1) *After private sector consultation and with the approval of the Governor, the Authority may –*
 - (a) *issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees;*
 - ...
- 2.2. This document establishes the Statement of Guidance on Corporate Governance and should be read in conjunction with the regulatory measures on internal controls and risk management.

3. Scope of Application

- 3.1. This Guidance applies to all entities regulated by the Authority including:
 - a) Banks and trust companies licensed under the Banks and Trust Companies Law;
 - b) Company managers and corporate services providers licensed under the Companies Management Law;
 - c) Administrators licensed under the Mutual Funds Law;



August 2015

- d) Securities investment businesses licensed under the Securities Investment Business Law;
- e) Insurance brokers and insurance managers licensed under the Insurance Law;
- f) Building societies regulated under the Building Societies Law;
- g) Credit unions regulated under the Cooperative Societies Law;
- h) Development banks regulated under the Development Bank Law;
- i) Money services businesses licensed under the Money Services Law.

The Authority will consider the contents of this Guidance in its onsite inspection process.

- 3.2. The Guidance does not codify or amend any existing law. Where the Guidance is incompatible with existing law, the law takes precedence and prevails.
- 3.3. The Authority acknowledges that regulated entities that are part of a group may be subject to group-wide governance practices. However, the Authority considers it important for each entity in a group structure that is a separate legal entity to adopt corporate governance practices that meet the objectives of this Statement of Guidance and that are appropriate for the particular operations of that legal entity which can be achieved by adopting the group-wide standard.

4. Definitions

- 4.1. The "Governing Body" of a regulated entity is the Board of Directors where the entity is a corporation and the general partner where the entity is a partnership.
- 4.2. A reference to the term "Director" includes a person who fulfils the functions of a Director, by whatever name called, and any member of the regulated entity's Governing Body, whether such person is an executive or non-executive/independent Director.
- 4.3. Where the Director is a corporate entity, this Guidance applies to the natural persons who are the Directors of such corporate entity.
- 4.4. A reference to the term "senior management" includes the most senior staff of the regulated entity, including heads of divisions, and any person who fulfils the functions of a senior manager, by whatever name called.

5. Guidance

5.1. The Corporate governance framework

5.1.1 A regulated entity should implement a corporate governance framework that addresses, at a minimum:

- a) The objectives and strategies of the Governing Body



August 2015

- b) Structure and governance of the Governing Body
- c) Collective Duties of the Governing Body
- d) Duties of individual members of the Governing Body
- e) Delegation of responsibilities
- f) Management of conflicts of interest
- g) Remuneration policy and practices
- h) Transparency and communications
- i) Duties of Sub-committees
- j) Relations with the Authority

5.2. Objectives and strategies of the Governing Body

5.2.1 The role and responsibilities of the Governing Body should be clearly documented.

5.2.2 The Governing Body is responsible for, at a minimum:

- a) the effective, prudent and ethical oversight of the regulated entity;
- b) setting the strategy and business objectives of the regulated entity;
- c) ensuring the regulated entity conducts its affairs in accordance with the laws, regulations, rules and standards of the Cayman Islands, the Authority and any other applicable foreign laws; and
- d) ensuring the regulated entity adopts a management structure appropriate with its size, complexity, structure and risk profile.

5.2.3 The Governing Body should set out its strategic objectives, the means of attaining those objectives and procedures for monitoring and evaluating its progress toward those objectives.

5.2.4 The Governing Body should determine the regulated entity's risk appetite and approve the policies, procedures and controls for identifying, assessing and managing all significant risks faced by the regulated entity.

5.2.5 The Governing Body should provide suitable oversight of risk management and maintain a sound system of risk measurement and controls.

5.2.6 The Governing Body has the ultimate responsibility for internal controls as well as all relevant areas of risk. The internal control strategy should be documented, implemented, and monitored. A regular review of internal controls should be undertaken and deficiencies addressed in a timely manner.



August 2015

5.3. Structure and governance of the Governing Body

5.3.1 The Governing Body:

- a) is the directing will and mind of the regulated entity and has ultimate responsibility for effectively overseeing the affairs of the regulated entity;
- b) should require regular reporting from management to enable it to make informed decisions;
- c) should conduct periodic self-assessments of its performance and governance practices and undertake to correct deficiencies identified. An assessment by an external evaluator should be carried out if the size, nature, and complexity of the regulated entity warrants such assessment;
- d) should have a balance of skills, knowledge, and experience among Directors so that the Governing Body can effectively oversee the business of the regulated entity;
- e) should have appropriate succession planning in place for Directors and senior management positions;
- f) should implement a conflicts of interest policy in respect of members of the Governing Body and senior management that requires each member of the Governing Body and senior manager to disclose conflicts of interests on at least an annual basis and every time a decision is taken in respect of the regulated entity when the interests of the senior manager or member of the Governing Body conflict with the interests of the regulated entity;
- g) should document the nomination and appointment procedures to the Governing Body, structure, functions, re-elections and balance between executive and non-executive Directors.

5.3.2 Delegation of duties to senior management, sub-committees or any other entity or person does not absolve the Governing Body from overall responsibility for the delegated functions.

5.4. Collective Duties of the Governing Body

5.4.1 The Governing Body should, at a minimum:

- a) monitor compliance with the laws, regulations, rules and standards of the Cayman Islands, the Authority, and any other applicable foreign laws requesting appropriate information and initiating appropriate control and supervision to rectify non-compliance;



August 2015

- b) enquire into the affairs of the regulated entity and, where applicable, request information from service providers for, or their presence at, meetings of the Governing Body where necessary. While Directors are entitled to rely on opinions and reports prepared by service providers, Directors should apply their minds to such information and make enquiries where warranted;
- c) ensure senior management is held accountable for day-to-day management of the regulated entity, ensuring that a senior management structure is in place and duties are appropriately segregated to create a system of checks and balances;
- d) where applicable, clearly distinguish between the responsibilities, accountabilities, decision-making, interaction and cooperation of the Governing Body, chairman, chief executive and senior management;
- e) require a clear division of responsibilities to ensure a balance of power and authority, so that no one individual has unfettered powers of decision. Where the posts of chairman and chief executive are combined in one person, or where the majority shareholder of the regulated entity is also the chairman or chief executive, the Governing Body should implement appropriate controls to ensure that policies and procedures are not overridden in a manner that would be prejudicial to the customers, shareholders, or creditors of the regulated entity or to the public interests;
- f) approve procedures to promote customer awareness of products and services and ensure the implementation of a complaints procedure that is communicated properly to their customers;
- g) establish an appropriately skilled compliance committee or person who should report directly and regularly to the Governing Body on all compliance matters;
- h) establish periodic verification of adherence with compliance standards and ensure any remedial actions to rectify shortcomings are promptly addressed;
- i) have the ultimate responsibility for approval of all key policies;
- j) maintain responsibility for delegated functions and appropriately record, monitor, supervise and remain informed of the delegated functions.

5.5. Duties of individual members of the Governing Body

5.5.1 The Director should have sufficient and relevant knowledge and experience to carry out his/her duties as a Director.



August 2015

- 5.5.2 The Director should maintain a thorough knowledge and understanding of the regulated entity's business.
- 5.5.3 The Director should update his knowledge periodically, consistent with changes in the industry, regulatory landscape or business of regulated entity.
- 5.5.4 The Director should act openly, honestly and in good faith at all times.
- 5.5.5 The Director should exercise care, skill and diligence that would be exercised by a reasonably diligent person with:
- a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions of a Director in relation to the regulated entity; and
 - b) the general knowledge, skill and experience that the Director has.
- 5.5.6 The Director should make enquires where issues are raised, satisfying himself or herself that appropriate and timely course of action is being taken to address any concerns raised by that Director.
- 5.5.7 The Director should carefully consider all decisions and understand potential negative implications for the regulated entity, its shareholders or its customers.
- 5.5.8 The Director should ensure s/he has sufficient time to apply his/her mind to the function of overseeing a regulated entity and carrying out his/her responsibilities as Director.
- 5.5.9 The Director should exercise independent judgement always acting in the best interests of the regulated entity.
- 5.5.10 The Director should always verify that the regulated entity, its Governing Body, its service providers and advisors are acting in accordance with the regulated entity's constitutional documents and any other documents directing the management and operation of the regulated entity and/or its advisors or service providers.
- 5.5.11 Directors should understand the limitations of services and reports provided by service providers.
- 5.6. Conflicts of Interest**
- 5.6.1 The Governing Body is responsible for ensuring that the regulated entity's Conflicts of Interest policy is documented and adhered to.
- 5.6.2 Conflicts of Interest policies should include the requirement that Directors



August 2015

disclose interests in any contract to which the regulated entity is an existing or potential party.

5.6.3 Directors and senior managers should submit an annual declaration of any conflicts of interest. The regulated entity should consider whether this practice should be extended to all of its staff.

5.6.4 Each Director should ensure that his/her potential or actual conflicts of interest are managed and controlled.

5.6.5 Directors should disclose any conflicts of interest relevant to discussions during meetings of the Governing Body.

5.7. Remuneration policy and practices

5.7.1 The Governing Body should have in place a remuneration policy for Directors and senior management and review that policy periodically to ensure that it is compatible with the regulated entity's strategy and values.

5.7.2 The remuneration system, incentives and performance standards should be consistent with the regulated entity's risk appetite, long term objectives and financial soundness, and should discourage inappropriate risk taking.

5.8. Transparency and communications

5.8.1 The Governing Body should have access to accurate, relevant and timely information regarding the regulated entity. Where stakeholders, internal and external to the Governing Body, participate in the corporate governance process, they should have access to relevant information.

5.8.2 Directors should hold regular meetings. Meetings of the Governing Body should be held sufficiently frequently to enable the Governing Body to carry out its role effectively.

5.8.3 A detailed agenda should be circulated sufficiently in advance of any meeting of the Governing Body to allow each member of the Governing Body to apprise him or herself of the matters to be discussed.

5.8.4 The Governing Body and Directors should fully, accurately and clearly record all meetings and any material decisions and/or considerations.

5.8.5 The records of meetings should include:

- a) The agenda items and circulated documents;
- b) Attendance of each member of the Governing Body;



August 2015

- c) The substance of matters considered including any objections to decisions made and declarations of conflicts of interest; and
- d) The information requested from, and provided by, advisors and service providers.

5.9. Duties of Sub-committees

- 5.9.1 The Governing Body may appoint sub-committees where necessary to adequately manage the regulated entity's risks and carry out specific functions.
- 5.9.2 Where sub-committees are appointed, the Governing Body should document a clear division of roles and responsibilities, and maintain oversight over the functions delegated to sub-committees.
- 5.9.3 Sub-committees should circulate agendas and maintain detailed meeting minutes, including meeting attendance, recommendations made and decisions taken.
- 5.9.4 Sub-committees should report to the Governing Body at sufficiently regular intervals.
- 5.9.5 The Governing Body should not abrogate its responsibility for functions delegated.

5.10. Relations with the Authority

- 5.10.1 The Governing Body and its Directors should conduct their affairs with the Authority in a transparent, open and honest manner always sufficiently disclosing to the Authority anything that the Authority would reasonably expect notice of.
- 5.10.2 Where the Governing Body or Director is uncertain whether to communicate information to the Authority it should be prudent and diligent and communicate the information in a comprehensive manner.