



ANGUILLA FINANCIAL SERVICES COMMISSION

GUIDELINES

(Issued under Section 61 of the Financial Services Commission Act, R.S.A. c.F28)

Corporate Governance

1. Statement of Objectives

To establish best practice guidelines for licensees with regard to corporate governance.

2. Application

High standards of corporate governance are important for all licensees. The way that these standards are achieved may differ according to the licensee's structure, size and complexity. In managing its affairs, a licensee should have regard to the principles of good corporate governance, as reasonable and applicable.

3. The Board

3.1. General Responsibilities

The Board of Directors (the "Board") is responsible for ensuring the effective management of the licensee.

The Board should:

- 3.1.1. Have a balance of appropriately skilled, experienced and qualified individuals who can apply informed and independent judgment to the governance of the licensee.
- 3.1.2. Ensure that the licensee is effectively directed and managed, including that its business is conducted in a sound and prudent manner with integrity, due care and professional skills appropriate to the nature and scale of its activities.
- 3.1.3. Meet regularly and members should devote sufficient time to their Board responsibilities.
- 3.1.4. Have access to accurate, relevant and timely information.
- 3.1.5. Clearly set out its commitment to good corporate governance principles in respect of the licensee.
- 3.1.6. Clearly set out its strategic objectives.
- 3.1.7. Set out the means of attaining those objectives and procedures for monitoring and evaluating its progress toward those objectives.



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3.2. *Structure*

The Board should:

- 3.2.1 Clearly set out the nomination, appointment and re-election procedures, structure, functions and balance between executive and non-executive directors of the Board in a transparent manner.
- 3.2.2 Where applicable, clearly identify the responsibilities, accountabilities, decision-making authority, and interaction and cooperation expected of the Board, chairman, chief executive and senior management.
- 3.2.3 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, evidence that appropriate controls are in place to ensure that management is sufficiently accountable to the Board.

3.3. *Directors' Liability*

- 3.3.1 A Director is an agent of the licensee to whom authority has been given by and on behalf of the shareholders and is appointed or elected to ensure the effective management and direction of the affairs of the licensee. The position is recognised not solely by the name but by the functions, authority and power exercised. There is no such thing as a “nominee” Director when it comes to liability in that every Director may be held accountable for losses through lack of diligence. It is imperative that Directors carefully consider all decisions and that all potential liabilities are analysed and understood.
- 3.3.2 A Director should operate according to the rules contained in the Articles of Continuance and Bylaws of the company.
- 3.3.3 A Director is in a fiduciary position to the licensee. Directors should act in good faith and in the interests of the licensee. In holding a position of trust a Director should not misuse his powers or the opportunities of his position, or misapply the licensee's property.
- 3.3.4 In conducting his duties a Director is required to exercise the degree of care, skill and diligence of a reasonable diligent person who has both the knowledge and experience expected of a Director in that position, and also taking account of any specific knowledge or skills applicable to a particular Director.



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- 3.3.5 A Director should not use his/her position to gain undue personal advantage or cause any detriment to the licensee.

3.4. *Risk Management, Conflicts and Complaints*

The Board should:

- 3.4.1 Ensure systems are in place to monitor independent risk functions and report deviations to an appropriate level of management. Where appropriate a risk management and/or an asset liability committee should be established to ensure adequate risk control techniques and procedures are applied and/or adequate investment policies are implemented.
- 3.4.2 Ensure adequate procedures are in place to promote customer awareness of products and services and to provide clear complaints procedures that are communicated properly to their customers.
- 3.4.3 Where applicable, establish policies that require directors and officers to disclose interests in any contract to which the licensee is a party, whether the interest is direct or indirect, as soon as the director or officer is aware of the fact. Generally, policies should be adopted to prevent directors and senior officers from taking personal advantage of opportunities that arise as a result of the position as a director or officer.
- 3.4.4 Establish procedures to guard against the Board being subject to undue influence from management or outside concerns, for example by including independent directors on the Board to assist in non-conflicted decision-making.
- 3.4.5 Have in place an appropriate compliance committee or person who should report directly and regularly to the Board on all compliance matters.
- 3.4.6 Have in place a proper remuneration policy for directors and senior management and review that policy periodically to ensure it is compatible with the licensee's strategy and values.

3.5. *Risk Management and Internal Control Systems and Functions*

Comprehensive audit programmes are central to effective internal controls systems. The Board should:

- 3.5.1 Provide oversight in respect of the design and implementation of sound risk management and internal control systems and functions.



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- 3.5.2 Have in place external and internal audit functions, with the establishment of an Audit Committee where appropriate.
- 3.5.3 Be responsible for the selection, retention, evaluation and compensation of those conducting audit reviews.
- 3.5.4 Arrange for a periodic independent review of the entity's internal control processes.

3.6. *Duties of the Senior Management*

The Board should:

- 3.6.1 Ensure that senior management carries out day-to-day operations of the licensee effectively and in accordance with the licensee's strategies, policies and procedures and promotes a culture of sound risk management, compliance and fair treatment of customers.
- 3.6.2 Ensure that senior management carries out its duties in a timely manner to enable the Board to carry out its duties and functions including the monitoring and review of the performance and risk exposures of the licensee, and the performance of senior management.
- 3.6.3 Ensure senior management provides to relevant stakeholders and the regulator the information required to satisfy the legal and other obligations applicable to the licensee or senior management.

3.7. *Regulatory Relations*

The Board is ultimately responsible for all acts and omissions of the licensee which includes its compliance with legal and regulatory obligations.

Furthermore, it is the responsibility of the Board to ensure that all applicable Guidelines issued by the Commission are fully complied with by the licensee. The Board should:

- 3.7.1 Appoint a liaison Board member to deal with regulatory matters to ensure that the Board is kept informed of any regulatory concerns or information.
- 3.7.2 Ensure that the appropriate follow up action is taken following instructions or recommendations from the Commission.



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3.8. *Remuneration Policy and Practices*

The Board should:

- 3.8.1 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 licensee, and has proper regard to the interests of its stakeholders.
- 3.8.2 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 licensee.

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