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EIF Directors

**Financial Services
Commission**

PO Box 940
Suite 3, Ground Floor
Atlantic Suites
Europort Avenue
Gibraltar
Tel (+350) 200 40283
Fax (+350) 200 40282
E-Mail:mkillick@fsc.gi
www.fsc.gi
Twitter: @gibfsc

Dear

Your EIF Directorship licence

The purpose of this letter is to provide persons who hold a licence to act as an Experienced Investor Fund (EIF) director, in accordance with Regulation 7(1) of the Financial Services (Experienced Investor Funds) Regulations¹ (EIF Regulations), with information on the Financial Services Commission's (FSC's) expectations of an authorised EIF director.

The nature of the regulatory regime applied to EIFs, is such that the FSC expects the authorised EIF directors to be very much involved in the running and operation of the funds for which they act. The design of the EIF regime means that reliance and expectations are placed on the authorised EIF directors' involvement in a fund's operations. Indeed this is one of the cornerstones of the regulatory regime that is applied to EIFs and authorised EIF directors are expected to be able to demonstrate this.

It is therefore not sufficient, nor acceptable, for the authorised EIF directors to effectively 'delegate' completely the decision-making and operation of the fund to the remaining directors or to other parties.

Essentially, this letter aims to provide assistance on a number of areas for which authorised EIF directors are expected to have responsibility and oversight and for which some have sought the Commission's views on what we consider is good practice. This letter does not, however, purport to include an exhaustive list of such areas and represents the more salient matters which have most frequently been encountered by the FSC when dealing with authorised EIF directors and individuals being considered for authorisation as EIF directors.

Individuals acting as authorised EIF director to multiple EIFs

The FSC expects authorised EIF directors to be able to fully discharge their function as a director, of each fund for which they have been appointed to the board of, both effectively and efficiently. In doing so, the FSC expects that each individual fulfils the whole range of duties and responsibilities which acting as a director of a firm carries. Where an individual has been appointed to multiple boards and is additionally carrying out another full time role (for example as a professional adviser such as an auditor or lawyer), the FSC will expect that individual to be able to demonstrate that he is properly and fully conversant with the day to day running, and operations, of the relevant fund(s) and is able to devote sufficient time to fulfil his duties to the fund(s).

¹ Regulation 7(1) - If an experienced investor fund is established as a company formed or redomiciled under the Companies Act or as a protected cell company, it shall have at least two Gibraltar ordinary resident directors qualified to act as the director of an experienced investor fund.

The Commission does not prescribe a maximum number of funds for which an individual is a director. However, the Commission will use an internal trigger of approximately 8 directorships at which stage authorised EIF directors will be asked for further details to ascertain how each individual is able to ensure that they can satisfy the obligations entailed in exercising their duties as authorised EIF directors alongside their other professional and working commitments. In seeking this information the Commission will aim to establish that, despite the number of directorships held and any other business interest, the individual is able to effectively and efficiently undertake the role expected of an authorised EIF director to all funds as and when required. At this stage in the process, this would only be an information seeking exercise. The Commission will, in reviewing this information, take into account the nature and activities of each fund.

Where as a result of such a review, the FSC concludes that an individual authorised as an EIF director is providing EIF directorships to an excessive amount of EIFs, especially where the provision of these directorships is not their primary business, the FSC may deem it necessary to cap the number of funds that said director can provide directorships to. The purpose of this is to ensure that directors can be sufficiently involved in the running of each individual EIF. The aim is to ensure that the directors have the time and ability to exercise effective corporate governance over the fund(s). The Commission would expect greater involvement in active EIFs. Additionally, the FSC would expect the directors of PCCs to spend sufficient time in relation to each cell particularly where the cells have different asset types.

Board meetings

Although each EIF Board will, as is natural, decide the number of board meetings to be held for each EIF in each calendar year, and this will largely be determined by the nature and level of activity of the fund, as well as its investment strategy. The FSC would also expect authorised EIF directors to attend all board meetings whether in person or via telephone unless there are exceptional circumstances. These meetings should always be held locally. The authorised EIF directors should apply the principles of good corporate governance as are applicable to the running of the fund.

The Commission would expect authorised EIF directors to have involvement in the fund other than via board meetings and be able to evidence this.

Oversight of delegated investment management

The FSC feels that where the investment management of the fund has been delegated, it is the board's responsibility, as a whole, to ensure that the firm or individual, to whom the investment management function has been delegated, is discharging the function effectively and efficiently and to the board's satisfaction. This may be done, for example, through regular presentations/discussions and the review and evaluation of reports submitted. In any case it would be expected that any oversight of these functions is documented accordingly to evidence that this is, in fact, being carried out.

Oversight of fund administrator and depositary

The directors' should ensure that adequate oversight of the fund administrator and depositary is also in place. This may be done, for example, through discussions during board meetings and should include the monitoring of NAVs and the manner in which this is calculated and reported, as well as for example periodic review and evaluation of any advices and statements produced by said parties. Again it is expected that this is appropriately documented to evidence that oversight is being exercised.

Conflicts of interest

It is inevitable that some conflicts of interest may arise. However, these should be documented and managed by the EIF board as well as being detailed in the offer document. For example, if an authorised EIF director is also the director of the fund administrator, this information should be specified in the offering document. Where a lawyer is an authorised director to the fund he/she should not be the person to have provided the legal opinion required by the Regulations.

A fund should not have both authorised directors being involved in the same administrator. Likewise, this would apply for any of the entities providing services to the fund such as the depositary. The fund may in these instances consider appointing an additional director not linked to the service provider to the fund. Where both authorised EIF directors are from the same service provider greater care should be taken and the Commission would expect the directors to evidence how independent oversight has been achieved.

The fund's offering document should also disclose potential conflicts of interest.

Breaches

EIFs must comply with the requirements set out in the EIF Regulations at all times. This is specified clearly in Regulation 4(1)(c) which states that an EIF is a fund which, inter alia, "complies with the requirements for experienced investor funds specified in [the] Regulations". Where a fund ceases to comply with the requirements set out in the EIF Regulations, it will no longer be deemed to meet the criteria for an EIF and may be de-registered as such. Responsibility for ensuring that a fund continues to comply with the requirements of the EIF Regulations lies with the persons having the management and control of the fund. This clearly includes the board of directors, and more specifically, the authorised EIF directors.

Where any breach, or potential breach, is identified the Commission should be notified immediately. It is the authorised EIF directors' responsibility, together with the rest of the board, as well as the fund's administrator (where appropriate), to ensure compliance with the relevant legislation. This includes, inter alia, matters such as ensuring that material change notifications are submitted within the stipulated 20 day timeframe, ensuring that audited financial statements are submitted within 6 months of the financial period end and ensuring that the EIF annual return is also submitted on a timely basis.

If anyone has any questions in respect of the above we would encourage them to contact the Commission.

Yours faithfully

Marcus Killick
Chief Executive Officer

Any advice, guidance or interpretation covered in this letter represents the views of the FSC as to its expectations of how the requirements of the relevant legislation in question is to be complied with and/or how it fails to be applied. This, however, is not intended as a definitive interpretation of the applicable legislation which is ultimately a matter for the courts to determine. The FSC does not provide, or purport to offer, legal advice.

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