



30 June 2014

Dear CEO

Experienced Investor Fund Directors Return

As you will be aware, the Financial Services Commission (the "FSC") has recently updated the Experienced Investor Fund Directors Return (the "EIF Directors Return") which is submitted annually to the FSC by experienced investor fund directors ("EIF Directors"). This is now in the form of a declaration of compliance which can be found on the FSC website. EIF Directors are requested to sign the EIF Directors Return confirming that they are in agreement with, and subscribe to, the standards as set out in the Financial Services (Experienced Investor Funds) Regulations 2012 (the "EIF Regulations") and the Gibraltar Corporate Governance Code for Collective Investment Schemes (the "Code").

Authorisation by the FSC as an EIF Director is subject to the expectation of compliance with the EIF Regulations and the Code. The Code was initially published in May 2013 and it is highly recommended that the Code is followed by funds in order to promote strong and effective corporate governance. Licensed EIF Directors are expected to comply with the code. The FSC expects authorised EIF directors to be involved in the running and operation of the EIFs that they manage. The regulatory design of the EIF regime means that reliance and expectation is placed on the authorised EIF Directors to ensure EIFs comply with local laws and legislation.

This letter is meant to supplement the EIF Directors Return and ensure that EIF Directors are fully aware of the standards and requirements of the declaration which they are expected to sign annually. This letter will essentially provide an overview of some salient duties and responsibilities of EIF Directors highlighted as a result of recent issues encountered by some funds.

An EIF Director should have a thorough knowledge and understanding of the EIF Regulations and the Code.

Duties under the Code

EIF Directors are required to adhere to the overriding principles which govern the manner in which EIF Directors discharge their fiduciary duties in an effective and prudent manner throughout the duration of their appointment. The FSC has felt it important to emphasise some of these principles, these are as follows:

- (1) The FSC expects that each and every EIF Director is actively involved in the ongoing management and decision-making of the fund(s) which they manage, and should be able to explain all board decisions made to the FSC. This applies to each fund an EIF director is on the board of;
- (2) EIF Directors owe a duty of due skill, care and diligence in the exercise of their powers and duties in the conduct of the affairs of the EIF. They must act as a reasonable person in their position and with their subjective skill set ought to do. They owe these duties to both the EIFs which they manage and to the investors of EIFs which they manage;



- (3) EIF Directors owe a fiduciary duty to act loyally, honestly and in good faith in what they consider to be in the best interest of the EIF investors;
- (4) EIF Directors must exercise the powers conferred on them for their correct purposes and not for personal or improper purposes;
- (5) EIF Directors must not exercise their powers in accordance with the instructions of third parties.

The following guidelines all stem from the above core principles. The below sets out a general overview of the Code (a full copy of which can be found on the GFIA website <http://www.gfia.gi>) and does not purport to be a full, exhaustive list of the guidelines and duties of EIF Directors.

- (1) EIF Directors should ensure that all due diligence checks have been made in relation to the principal or promoter of the EIF;
- (2) EIF Directors must understand the structure and operation of the EIF(s) which they manage;
- (3) EIF Directors should understand the intended investor base and be comfortable that the proposed investor base does not breach laws or regulations in Gibraltar or other territories where the EIF will promote or offer participation;
- (4) EIF Directors must understand the role the other service providers to the EIF will be providing and the extent to which they are delegating their powers. They should always have sight of and check the net asset valuations of the EIF as, even though the administrator calculates this, the board ultimately has responsibility for the valuation of the units in an EIF;
- (5) EIF Directors are responsible for the contents of the offering document and should ensure all information is accurate and not misleading, and that the requisite information is contained within the EIF's offering document to allow an investor to make an informed decision whether to invest or not;
- (6) EIF Directors ought to monitor and review investment performance and ensure the investment policy is being adhered to and restrictions not being breached;
- (7) EIF Directors must supervise delegated roles and ensure that service providers are carrying out their duties;
- (8) EIF Directors should ensure that an EIF's financial statements are a true and fair view of the EIF's state of affairs at the end of its financial year;



- (9) EIF Directors should ensure that investors receive all information that the EIF's offering documents states they are meant to receive;
- (10) The board of directors should meet as often as necessary (at least quarterly) for good corporate governance. Board meetings should be more frequent when key strategic decisions are required;
- (11) EIF Directors may be directors of more than one EIF, in addition to having full time employment. This does not reduce the amount of time the FSC expects the EIF Director to dedicate to an EIF which he manages; an EIF Director must ensure he has sufficient time to carry out his duties as an EIF Director.
- (12) EIF Directors are required to pay special attention to the crisis management of EIFs. They must be pro-active in ensuring that the decision maker of the EIF (e.g. investment manager or investment director), and other service providers of the EIF, communicate information to the directors which may require urgent action (this includes examples such as potential litigation, liquidity management, market conditions etc.);
- (13) EIF Directors should identify conflicts of interest which arise in the management of an EIF and ascertain that they were disclosed and managed fairly and effectively;
- (14) EIF Directors should be aware of the additional responsibilities of protected cell companies;
- (15) Effective oversight and supervision of the EIF is key to an EIF Director's role and duties. Specific attention should be paid to the following matters:
- Risk management;
 - Audit and accounting;
 - Compliance;
 - Control of EIF assets.

Duties under the EIF Regulations

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".

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 EIF. This clearly includes the board of directors, and more specifically, the authorised EIF directors.



Where any breach, or potential breach, is identified the FSC and the board of the fund should be notified immediately. If considered necessary by either the board or by the FSC the subscribers shall also be notified. 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 and code.

If, for any reason, an EIF Director is unable to comply with the EIF Regulations or the Code, the EIF Director concerned must make an appropriate record of this and notify both the EIF(s) which he is managing and the FSC, and must provide the rationale for non-compliance. Although the FSC would only be expected to be notified of non-compliance when material issues arise via the annual return, EIF Directors are, however, expected to document and explain when unable to comply regardless of materiality and report to the board of the fund when the issue arises. An example of material non-compliance / breach with the Code which should be reported to the FSC, would be for example where the board of directors is not mainly composed of independent directors. Another example would be where the time a director dedicates to funds is suddenly going to be significantly reduced but only for a specific period of time. The FSC would expect that there would be a legitimate reason for this temporary non-compliance and would want the rationale explained in minutes and in the return to the FSC. The FSC would expect an EIF director to step down if their time commitment to the fund was permanently reduced to the extent that they could not provide sufficient time to the fund. Please note that such material non-compliance should not be regarded as usual practice and should only occur in exceptional circumstances and with good reason. Failure to comply with this process may adversely affect the fitness and propriety of the directors of the fund.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Joanne Beiso', written over a horizontal line.

Joanne Beiso
Head of Funds Supervision