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Alternate Perspectives

Guernsey Company Directors: Duties & Conflict of Interest Management
Director Info Guide

Disclaimer: This document is for general informational purposes only and does not constitute legal advice. Directors remain personally responsible for ensuring they are fully informed and compliant with their duties under Guernsey law and to ensure they remain consistently informed and up to date with evolving laws, regulations, and compliance requirements. Where in doubt, directors should consult the Chair, Company Secretary, or seek independent legal advice.

Overview

As a director of a Guernsey company, your conduct is governed by the Companies (Guernsey) Law, 2008 (as amended). Whether you are an executive, non-executive, shareholder-nominated, or independent director, your fiduciary duty is always to the company—not to individual shareholders or appointing parties.

This info guide outlines your core responsibilities and practical steps for managing conflicts of interest, with additional notes for directors of regulated entities.

Core Duties Under Guernsey Law

- Act in good faith and in the best interests of the company.
- Exercise powers for proper purposes and use independent judgment.
- Avoid or properly manage conflicts of interest.
- Apply reasonable care, diligence, and skill.
- Disclose any direct or indirect interests in company transactions (Section 162).

Full legislation

If You Are Also a Shareholder

Being a shareholder does not alter your director duties. You must:

- Prioritise the company's interests over personal financial interests.
- Avoid using confidential board information for personal gain.
- Recognise that shareholding may create perceived or actual conflicts - especially in decisions involving dividends, investments, share issues, or restructuring.

Managing Conflicts of Interest

- **Full Disclosure**
  - Declare any personal interest in a transaction - at a board meeting or in writing.
  - Disclose immediately or as soon as reasonably practicable.
- **Board Discussion & Documentation**
  - Ensure the disclosure is recorded in board minutes.
  - Be prepared to abstain or recuse yourself from related discussions or votes.
- **Maintain a Conflicts Register**
  - The Company Secretary should maintain and regularly update a register of declared interests.
- **Review Governing Documents**
  - Check the Articles of Incorporation and any Shareholders' Agreement for provisions on director conflicts.

Consequences of Not Declaring Conflicts

Legal Consequences

- Breach of Fiduciary Duty: Directors are legally required to act in good faith and in the best interests of the company. Failing to disclose a conflict may constitute a breach of this duty.
- Personal Liability: A director may be held personally liable for any loss suffered by the company as a result of an undisclosed conflict. This could include compensation orders or indemnity clawbacks.
- Invalidation of Decisions: Board decisions made without proper disclosure of conflicts may be challenged or rendered void, especially if the conflict influenced the outcome.

Regulatory Consequences (for Regulated Entities)

- Disciplinary Action by the GFSC: The Guernsey Financial Services Commission (GFSC) may impose sanctions, including fines, public statements, or disqualification from holding directorships in regulated entities.
- Failure of Fit & Proper Test: Non-disclosure may affect a director's standing under the GFSC's "fit and proper" criteria, potentially impacting future appointments or PQ approvals.
- Breach of the GFSC Code of Corporate Governance: For regulated boards, non-compliance with governance expectations (including transparency and conflict management) may trigger regulatory scrutiny.

Reputational & Practical Consequences

- Loss of Trust: Undeclared conflicts can damage relationships with fellow board members, shareholders, and stakeholders.
- Removal from Office: The board or shareholders may remove a director for misconduct or breach of duty.
- Litigation Risk: Other directors, shareholders, or regulators may initiate legal proceedings for breach of duty or negligence.

Legal Commentary & Further Reading

Carey Olsen – Directors' Duties in Guernsey

Mourant – Directors' Duties Under Guernsey Law

Ogier – Duties of Directors of Guernsey Companies

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Regulated Boards & GFSC Requirements

If you are appointed to a board of a regulated entity, additional obligations apply under the oversight of the Guernsey Financial Services Commission (GFSC):

- Prescribed Positions: Certain roles (e.g. director, MLRO, compliance officer) require prior GFSC approval or notification via the Personal Questionnaire (Form PQ).
- Fitness & Propriety: The GFSC assesses whether individuals are "fit and proper" to hold regulated roles, including integrity, competence, and financial soundness.
- Ongoing Obligations: Directors must ensure compliance with the GFSC's Codes of Practice, AML/CFT requirements, and sector-specific rules.

GFSC PQ Guidance Note **GFSC Director Requirements** **GFSC Homepage**

GFSC Finance Sector Code of Corporate Governance

The GFSC has issued the Finance Sector Code of Corporate Governance, which provides a framework for sound governance practices for regulated financial services businesses in Guernsey.

Access the Code here: **Finance Sector Code of Corporate Governance (2021)**

Who It Applies To:

- All companies licensed by the GFSC across sectors including banking, insurance, investment, and fiduciary services.
- Boards of directors and individual directors of these regulated entities.
- It is principles-based, meaning it allows flexibility in how firms implement governance practices, depending on their size, complexity, and risk profile.

The Code outlines expectations around:

- Board structure and responsibilities
- Director duties and conduct
- Risk management and internal controls
- Conflicts of interest
- Disclosure and transparency
- Remuneration and shareholder relations

Director Notification Obligations

Directors are personally responsible for ensuring that their personal information remains accurate and up to date across all relevant parties. This includes:

- Company Secretary: Directors must promptly inform the Company Secretary of any changes to their residential address, legal name, or other relevant personal details to ensure accurate internal records and timely statutory filings.
- Guernsey Registry: Under the Companies (Guernsey) Law, 2008, directors must notify the Registry of changes to their personal details (e.g. address, name) within 14 days. This is done via the online portal using the appropriate change forms.

Guernsey Registry – Directors & Resident Agents

- GFSC (for regulated entities): Directors of regulated entities must also update the Guernsey Financial Services Commission (GFSC) if there are material changes to their personal circumstances, especially if they have submitted a Personal Questionnaire (PQ). This is essential to maintain their "fit and proper" status.

GFSC – Acting as a Director

Failure to notify these changes may result in non-compliance, regulatory scrutiny, or administrative penalties.

Company Registry & Legal Resources

The Guernsey company registry is managed by the Guernsey Registry, which is responsible for company incorporations, annual validations, and statutory filings. Directors should be aware of their obligations under the Companies Law and maintain up-to-date filings.

Key links:

- Guernsey Registry: **https://www.guernseyregistry.com**
- Directors: **https://www.guernseyregistry.com/DirectorsandResidentAgents**
- Companies (Guernsey) Law, 2008: **https://www.guernseylegalresources.gg/**

Final Note

Even if appointed by a shareholder or holding shares yourself, your fiduciary duty is to act independently and in the best interests of the company as a whole.
Transparency and early disclosure are the best safeguards against conflicts.
For any uncertainty, consult the Chair, Company Secretary, or seek independent legal advice.

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