

Positive and Effective Regulation Doing business 2014 and beyond safely



November 2014

Our role

FSC

- The Financial Services Commission (FSC) is the regulator of an international financial services centre, regulating providers of financial services conducted in both Gibraltar and other jurisdictions, particularly the UK.

Purpose

- Our overall purpose is to regulate the financial services industry in Gibraltar.

Aim

- Our aim is to protect consumers, enhance the reputation of Gibraltar as a quality finance services centre and promote good business.



Key aspects of a firm's responsibility

- Research shows that the vast majority of firm failures are because of **senior management**.
- They run out of money because they are **badly run**.
- Good corporate governance doesn't stop management being bad at their jobs, **but** it should held the Board to identify poor performers and areas of risk.
- Good governance should also give **Board members** a clear picture of their roles and responsibilities.

Duties of a firm

- Corporate Governance is therefore very important
 - For Trust and Company Managers, it is the *raison d'être*.
 - We rely on you to protect the interests of shareholders, customers etc.
 - You provide the corporate governance for other people. It is up to you to maintain standards.
- Other areas which are also pivotal include
 - Client Money
 - AML

Duties of a firm



Fiduciary

- Loyalty, honesty and good faith



Duties of care, skill and diligence

- For example, knowing your customer in order to give him or her a good service and knowing which customers may be attempting criminal activities. E.g., money laundering.

What areas do we seek confidence in?

1. That a company is governed by directors with a **collective** expertise to understand such things as the nature of the company, the industry in which it operates and its risk profile.
 - Good practice would include regular board meetings of sufficiently experienced directors that are minuted appropriately, and include constructive challenge.
 - Also, shareholders should receive useful and regular communication.
2. Trustees who focus on the interests of those whose money they are charged with.
 - This includes clearly explaining to members of the trust how monies are invested, how anti-money laundering checks are done, how conflicts of interest are managed, the due diligence done on investments, the reporting to members of activities.
3. Directors should have sufficient capacity to fulfil their duties.
 - A perennial issue is whether those with extensive directorship portfolios and other general obligations have sufficient time and resources to be able to focus on each fund.
 - Not just in bread and butter days but when something goes wrong.

Implications of bad Corporate Governance?

- **Trustees not meeting**
 - no regular communication between trustees
- **Decisions not being reviewed**
 - trustees making decisions without challenge or four eyes
- **Conflicts of interest not being challenged**
 - members of a QROPS being advised by someone linked to the trustee
- **Board members not taking collective responsibility**
 - relying on one numerate member of the board to deal with financial issues
- **Board members not challenging**
 - decisions being rail-roaded through
- **Lack of clear accountability**
 - dotted lines, overlaps and underlaps in committee terms of reference – things get missed, people waste time

Culture of an organisation

“This process begins with boards and senior management defining clearly the purpose of their organisations and promoting a culture of ethical business throughout them.

Employees must be grounded in strong connections to their clients and their communities. To move to a world that once again values the future, bankers need to see themselves as custodians of their institutions, improving them before passing them along to their successors.”

Mark Carney

Inclusive capitalism: creating a sense of the systemic (May 2014)

Culture of an organisation

- In Virgin Money, for example, call centre staff are told to speak to customers and deal with queries as if the customer were their mum.
 - This leads to a much more customer focused conversation.
- Amazon have an empty chair at meetings to represent the customer.
 - Executives were asked to include the customer in their thought process as if he/she was present. This practice is part of Amazon's corporate "customer obsessed" culture.

Culture of an organisation

- We **can't** force a company to change its culture.
- What we **can** do is stamp down on poor examples – unaccountable managers / overly strong CEOs / lack of good discussion in board meetings.
- **Firms need to do what is right for them and their customers and then explain to us why it is the right thing.**
- We want licensees to adopt an approach that puts the client first and ensuring that this runs through the firm and through all aspects of the business. Including:
 - how business strategies are developed,
 - how clients are dealt with,
 - how front line processes are designed and performed.

Culture of an organisation

Still need:

- Identification of public interest vs. client interest conflict.
- Appropriate, professional handling and where necessary, reporting of these situations.

How can we assess a firms culture?

We can:

- Draw on customer experiences, for example, by looking at complaints and how they are handled
- Look at the manner in which decisions are made or executed
- Look at the general behavior of a firm
- Review how a board engages in these issues

Our delivery of regulation

- It is important for the FSC to make good decisions
 - whether in authorising licensees, supervision or enforcement work.
 - exercising robust judgments based on the risks posed by business models, the way they will be governed and by who.
- We will be efficient in our decision making, unbureaucratic and accessible to the industry.
- This will be supported by
 - A dedicated authorisations process.
 - An outcomes focused approach to supervision.
 - A risk based approach, focus on bigger issues and higher risks to our objectives.
 - Credible deterrent.

Questions?

Useful links

FRC Corporate governance code and stewardship code

- <https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance.aspx>