

16 September 2020

## Circular addressed to Companies and Individuals providing Directorship Services

A director of a company has general duties of loyalty and duties of care and skill which are of a fiduciary nature, as outlined in the [Companies Act](#) (‘the Act’). However the Act also sets out statutory duties relating to the governance of the company and its proper administration and management. The role of a director is undoubtedly an onerous one and should therefore not be taken lightly. Companies and individuals are able to provide directorship services in terms of a licence under the [Company Service Providers Act](#), or as permitted in terms of the [Trusts and Trustees Act](#). The purpose of this Circular is to remind all concerned parties who provide directorship services, of the importance of adhering to all their obligations, both in terms of the Companies Act and the applicable legislative and regulatory framework that they fall under.

The Act requires directors to act in the best interest of the company, and to carry out their duties in an honest and transparent way. One way for directors to fulfil such obligations is by taking all the necessary steps to ensure that the companies they administer adhere to their statutory submission requirements as outlined in Article 183 (Company’s Annual Accounts) and Article 184 (Annual Return) of the Act, which submissions are to be complete and accurate, and complied with within the timeframes set out by law. Failure to do so, would put the company in breach of the Act, resulting in the incurring of penalties. The fact that the directors, as officials of the company, are held to be liable for such penalties clearly indicates the directors’ responsibility in this regard. Such conduct is also, in turn, not regarded as good corporate governance practice.

The importance of directors ensuring that their client companies comply with reporting obligations is also echoed in the section relating to ‘*Rules for Registered Persons which act as Directors in relation to other legal entities*’ within the [Rules for Company Service Providers](#). Specifically, Rule 16.13 obliges anyone acting as a Director, as licensed in terms of Company Service Provides Act, to ensure that the company for which they act as a Director, keeps proper records, observes the minimum record retention period and files accounts and returns as required by law. A similar standard of record keeping and reporting also emanates from Rule 9.6 of the [Trustees Code of Conduct](#) relating to ‘*Accounting and Record Keeping*’, which requires licensed entities to maintain financial records which permit thorough and satisfactory supervisory activity, as well as be sufficient to comply with any reporting requirements.

Therefore persons providing directorship services are reminded that failures of the nature outlined above are deemed by the Authority to not only be in breach of the Companies Act, but also in breach of the licensed entity’s respective legislative and regulatory framework, as applicable. The Authority may therefore take any enforcement action which it may deem to be appropriate in the circumstances.