

Guernsey Financial Services Commission

**Feedback following the Commission's consultation on  
Exemption of Directorships Connected to Authorised and  
Registered Collective Investment Schemes**

**The Regulation of Fiduciaries, Administration Businesses and  
Company Directors, etc (Bailiwick of Guernsey) Law, 2020**

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## Background

On 8 December 2022 the Commission published a consultation paper that proposed making new regulations providing for the exemption from licensing under The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (the “Fiduciaries Law”) of the activity of acting as a director of certain companies connected to registered or authorised collective investment schemes. A copy of the consultation paper is available on the [Consultation Hub](#). This consultation complemented proposals in a recent Policy & Resources Committee (“P&R”) consultation paper on implementation of a directorship registration regime.<sup>1</sup>

In considering the comments received on our consultation paper, the Commission has liaised closely with P&R in respect of the comments received on its proposals. While separate feedback on those proposals will be provided to respondents, the final proposals explained in this feedback paper form part of a joined up and coherent overall approach to the setting of exemptions under the Fiduciaries Law and the scoping of the new director registration regime.

We reviewed 28 consultation responses, seven received directly and 21 as part of composite responses to the P&R consultation. The Commission is grateful to everyone who responded to the consultation.

## Summary of Feedback

Respondents were generally supportive of the proposals in the Commission’s consultation paper but also sought:

- further clarification of the proposals;
- further clarity or guidance on current Fiduciaries Law licensing exemptions; and
- the creation of new categories of licensing exemption under the Fiduciaries Law.

The Commission has carefully considered this feedback and has applied a risk-based approach in the development of licensing exemptions policy, taking particular account of the relative money laundering and terrorist financing risk profile presented by different types of directorship activity.

Following consultation with the Commission, the Policy and Resources Committee have made the Regulation of Fiduciaries etc. (Bailiwick of Guernsey) (Amendment) Regulations, 2023 (the “Regulations”) which came into effect on 8 July 2023. The Regulations extend an existing exemption, introduce a revised version of the previously proposed exemption for Collective Investment Scheme-connected directorships, and also provide for three additional, new

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<sup>1</sup> Policy & Resources Committee, CONSULTATION PAPER ON REVISIONS TO THE SUPERVISORY FRAMEWORK SURROUNDING THE SIX DIRECTORSHIP EXEMPTION, 23 November 2022, <https://www.gfsc.gg/sites/default/files/inline-files/Six%20directorship%20consultation%20Consultation%20Paper%20FINAL.pdf>

categories of director exemption. A copy of the Regulations is available on the Commission's [website](#).

The Commission has published a revised version of its Frequently Asked Questions on acting as a director which reflects the revisions to the Fiduciaries Law. This can be found on the Commission's website at the following link: [Requirements for Individuals Acting as a Director](#).

## New Categories of Licensing Exemption

### *Acting as Director of a Family Company*

Comments received identified that while an exemption applied, under section 3(1)(d) of the Fiduciaries Law, to the activity of acting as a director of a company where either one of the director, a close relative of the director or a trustee of a family trust holds more than half the share capital of the company, such an exemption did not apply where such parties collectively held more than half of the companies share capital. The Regulations have widened the exemption to now apply where more than half of the share capital is collectively owned by the director's family or family trust.

### *Acting as Director of a Company Connected to Authorised or Registered Collective Investment Schemes*

All respondents were in favour of a proposed exemption for directorships of companies connected to authorised or registered collective investment schemes. There were calls for greater clarity around the scope of the exemption and for some redrafting of the proposed wording to avoid potential ambiguity.

Some respondents also proposed that the exemption should be extended to apply to directorships of any company, not just authorised or registered collective investment schemes, administered by a licensed person.

Following consideration of the comments received a new exemption has been added to the Fiduciaries Law which is consistent with the consultation proposal. This exemption applies where the individual director is also a director of the connected collective investment scheme or the collective investment scheme's general partner, and the company is administered by the designated administrator of the connected collective investment scheme.

Respondents sought further clarity on the meaning of a company "connected to a collective investment scheme". Further guidance relating to specific scenarios has been added to the FAQs which can be found [here](#).

### *Acting as Director of a States Owned Company*

Further to feedback received a new category of licensing exemption has been created for the activity of acting as a director of a company wholly beneficially owned by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, or any committee thereof.

## *Acting as a Member of the Guernsey Banking Deposit Compensation Board*

A further new category of licensing exemption has been created for the activity of acting as a member of the Guernsey Banking Deposit Compensation Board.

## *Acting as a Director of a Non-Bailiwick Supervised Financial Firm*

A number of respondents proposed that directorships of foreign supervised companies should be exempted given that such activity also falls under the oversight of the home jurisdiction supervisor. This proposal has been taken up and the following additional exempt category has been added to the Fiduciaries Law:

*“(af) acting as director of a company which undertakes banking, insurance or investment activities where those activities are supervised by a supervisory authority which is a signatory to the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding”*

It should be noted that a company undertaking investment activities includes a company which is a regulated collective investment scheme subject to supervision. A person wishing to rely on this exemption should establish that the company is supervised and does not fall outside supervision for example through exemption provisions applicable in the home jurisdiction.

## **FAQs**

As previously stated the Commission’s FAQs on Acting as a Director have been updated to reflect the new exemption categories described above. In response to comments received further guidance has also been added on exemption under section 3(1)(w) of the Fiduciaries Law for incidental activity. Specifically, the licensing status of remote working executive directors of non-Bailiwick operating companies was queried. (N.B. directorships of companies with an established place of business in the Bailiwick may already be exempt under section 3(1)(b) of the Fiduciaries Law.)

The Commission considers that the activity of an individual acting as a director of a trading company may be exempted under section 3(1)(w) of the Fiduciaries Law where the individual is also employed by the company in an executive role provided that:

- no separate or additional remuneration is taken for the directorship role and if the directorship role were to cease there would be no reduction in the individual’s remuneration in respect of the executive role;

- the directorship is incidental to the carrying on of the individual’s primary executive role and the significant part of the individual’s day-to-day activities are given over to the conduct of the executive role;
- all provisions of section 3(1)(w) are otherwise met; and
- the activity is not exempted under any other provision of section 3 of the Fiduciaries Law.

For the purposes of this guidance a trading company is a company primarily engaged in commercial activity as opposed to investment or asset holding activity and which is not a regulated financial services firm. This exemption may, for example, apply to an individual who is an executive director of a UK advertising company whose principal role is head of communication, or head of HR and is a salaried employee.

It is the Commission’s view that an employee or officer of a family office who acts as a director of companies within the family office structure, where the family office entity is not a licensee and the directorship activity is not conducted under the authorisation of a licensed person, may not use the exemption under section 3(1)(w) of the Law. Such activity is intrinsic to the overall family office management function and cannot be regarded as incidental.

## Interaction with Director Registration Regime

While this feedback statement addresses only the licensing exemption regime under the Fiduciaries Law it is important to understand how this relates to and impacts the new Director Registration Regime. The Director Registration Regime applies only to directorship activity using the exemption for individuals acting as director of not more than six companies (the “up to six” exemption under section 3(1)(g) of the Fiduciaries Law). With the broadening of available exemptions under the Fiduciaries Law, the extent of directorship activity using the “up to six” exemption, and hence registrable, may be reduced.

It should be noted that there are further exemptions from the requirement to register under the Director Registration Regime and these should not be confused with licensing exemption under the Fiduciaries Law. For example, directorships of Bailiwick companies administered by licensed fiduciaries are exempt from registration but the decision has been taken not to expressly exempt such activity from the licensing requirements of the Fiduciaries Law.

Exemptions under the Director Registration Regime and the Fiduciaries Law have both different purposes and effects. The registration exemption applies to individuals using the “up to six” licensing exemption under section 3 of the Fiduciaries Law, taking into account the mitigating impact of the licensed administrator, which also acts as resident agent for the company, on their ML/TF risk profile, but the exemption does not remove the obligations on the individual under Schedule 3 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “PoC Law”). A general exemption from licensing for directorships of companies administered by licensed fiduciaries would have much further reaching and potentially undesirable consequences, entirely removing all directors (even where the number of directorships greatly exceeded six) from any obligation to comply with Schedule 3 of the PoC Law and, moreover, from the broader scope of licensing as a Personal Fiduciary Licensee.

Further information on the Director Registration Regime is available on the Commission’s website ([www.gfsc.gg](http://www.gfsc.gg)).