

Changes to the requirements for individuals acting as a director

Briefing Summary: Acting as a director of a company or incorporated body (whether incorporated in or under the laws of the Bailiwick of Guernsey or elsewhere) by way of business^[1] is a regulated activity under The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 as amended (the "**Fiduciaries Law**"). Individuals carrying on such regulated activity in or from within the Bailiwick are required to hold a personal licence pursuant to the Fiduciaries Law (a "**Personal Fiduciaries Licence**") unless an exemption applies.

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On 8 July 2023, new regulations to the Fiduciaries Law came into operation which provide **additional exemptions** from the need to obtain a Personal Fiduciaries Licence (one of which is particularly significant for the funds industry) and which introduce a new **director registration regime** with which directors should familiarise themselves in advance of the 1 October 2023 registration deadline.

These developments are particularly significant for those directors relying on the "**Six Directorships Exemption**", namely the exemption granted from the need to obtain a Personal Fiduciaries Licence where acting as a director of six or fewer companies.^[2]

This is therefore a timely moment for directors to:

- review their list of directorships and ascertain whether any of those directorships are covered by the expanded statutory exemptions (which we have set out below); and

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- if they rely on the Six Directorships Exemption:
- they should ascertain whether any of those directorships are for companies which are administered by a Bailiwick licensed fiduciary or registered under the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (the "**Charities Law**"). If any of the companies are not so administered or registered, they must register with the Guernsey Financial Services Commission (the "**GFSC**") before the 1 October 2023 registration deadline; and
- they should remember that, as part of their anti-money laundering and countering the financing of terrorism ("**AML/CFT**") requirements, they must undertake due diligence on the beneficial owners of those companies on which they serve.

The additional exemptions

Additional exemptions from the requirement to hold a Personal Fiduciaries Licence were introduced on 8 July 2023 by the Regulation of Fiduciaries etc (Bailiwick of Guernsey) (Amendment) Regulations, 2023.

The new exemptions are:

- 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 director of a non-Bailiwick body 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 (the "**IOSCO MoU**").

Carey Olsen comment: For example, acting as a director of a Cayman company which is licensed under the Cayman Islands' Mutual Funds Act will now be exempt since the Cayman Islands' Monetary Authority is a signatory to the IOSCO MoU.

- Acting as a director of a company connected to an authorised or registered collective investment scheme, where the director also acts as a director for the collective investment scheme (or its general partner) and both entities are administered by the same licensed administrator.

Carey Olsen comment: This is a welcome addition to the statutory exemptions and will have a significant impact for the funds industry. A company is "connected to a collective investment scheme" where it "directly facilitates the management, operation or investment activity of the collective investment scheme". An example of a directorship covered by this exemption would be the directorship of a carry or co-investment vehicle (or the general partner of a carry or co-investment vehicle) where (a) the director is also a director of the relevant collective investment scheme (or its general partner) and (b) all carry/co-investment vehicles and the collective investment scheme have the same administrator (which is often the case in fund structures).

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The existing exemptions

For completeness, the other exemptions are:

- Acting as a director of a company that has an established place of business within the Bailiwick provided that no services consisting of, or comprising, a regulated activity are supplied to the company by the director.[3]
- Acting as a director of a company which is quoted on a recognised stock exchange.[4]
- Acting as a director of a company where more than half in nominal value of the equity share capital of that company is held by:
 1. the director, as beneficial owner;
 2. any close relative of the director, as beneficial owner; or
 3. the trustees of a trust of which a person mentioned in (a) or (b) is a beneficiary.
- Acting as a director of a supervised body.[5]
- Acting as a director of a company which is a subsidiary of, or wholly owned beneficiary owned by:
 1. a company or body described above; or
 2. a partnership or limited liability partnership which is, itself, licensed under the Protection of Investors (Bailiwick of Guernsey Law, 2020 (the "**POI Law**") or is an authorised or registered collective investment scheme.
- Acting as a director of a company in the course of a profession or business (i) which is undertaken without separate or additional remuneration (whether from the client concerned or from a third party), and (ii) which is incidental to the carrying on of that profession or business, provided that such individual carrying on the profession or business does not hold himself/herself out as undertaking those activities.
- The Six Directorships Exemption.

Carey Olsen comment: It is important to remember that the Six Directorships Exemption only applies to directorships not covered by any of the other statutory exemptions described herein. If the Six Directorships Exemption is exceeded, the individual will be required to hold a Personal Fiduciaries Licence.

The GFSC also has the power to grant discretionary exemptions on a case-by-case basis.

Whilst not technically an exemption, it is worthwhile to remember that if an individual is not receiving a director's fee or any other income, fee or benefit from his/her directorship then the activity may not be regarded as a regulated activity for the purposes of the Fiduciaries Law as it is not being carried on "by way of business". No Personal Fiduciaries Licence would be required in such circumstances. However, it should be noted that the GFSC has clarified in the FAQs on its website that where a director receives a single fee with respect to a group of related appointments (e.g. the director receives a fee in respect of his/her appointment to a listed "TopCo" but no fees are paid in connection with his or her appointments to other group entities sat below TopCo), all such appointments should nonetheless be treated as being carried on "by way of business".

The new GFSC registration requirements

Where an individual relies on the Six Directorships Exemption, but one or more of his/her directorships relate to a company[6] that is not:

- administered by a Bailiwick licensed fiduciary; or
- registered under the Charities Law,

such activity will be exempt from licensing, but the director will be required to register with the GFSC.

The individual is subject to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the "**Proceeds of Crime Law**") and is required to comply with the requirements in Schedule 3 to that law and the rules in the GFSC's Handbook on Countering Financial Crime and Terrorist Financing (the "**Handbook**"), meaning the director must undertake due diligence on the beneficial owners of such companies.

Individuals qualifying for registration have until 1 October 2023 to register. Further details on the regime and application form are available on the GFSC's website.

For the avoidance of doubt, the registration requirement does not require individuals relying on the Six Directorships Exemption to be licensed under the Fiduciaries Law.

Where an individual relies on the Six Directorships Exemption and all companies are either administered by a licensed fiduciary or registered under the Charities Law, such activity will be exempt from licensing and registration. However, the individual remains subject to the Proceeds of Crime Law and is required to comply with the requirements in Schedule 3 to that law and the rules in the Handbook as described above.

[1] The licensing requirements described herein apply to directors living in the Bailiwick of Guernsey, including the islands of Guernsey, Sark and Alderney.

[2] Where such directorships are not covered by any of the other statutory exemptions in the Fiduciaries Law.

[3] A company has an established place of business if it has its own staff and premises in the Bailiwick.

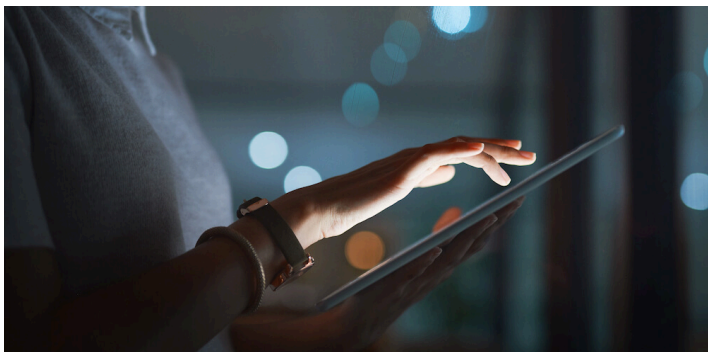
[4] See the Beneficial Ownership (Definition) Regulations, 2017 for a list of recognised stock exchanges.

[5] A supervised body includes:

1. a licensee within the meaning of the POI Law or which is exempt from licensing under section 44 of that law;
2. an authorised or registered collective investment scheme under section 8 of the POI Law;
3. a licensee within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002;
4. a licensee within the meaning of the Insurance Managers and Intermediaries (Bailiwick of Guernsey) Law, 2002;
5. a licensee within the meaning of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022;
6. a body which is a licensed banking institution; or
7. a body which is of any other class or description prescribed for the purposes of the Fiduciaries Law by regulations.

[6] i.e. the companies in respect of which the Six Directorships Exemption applies (disregarding directorships which are covered by any of the other statutory exemptions in the Fiduciaries Law).

Please note that this briefing is intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen (Guernsey) LLP 2026



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