



Practical matters to bear in mind

Service area / [Investment Funds](#)

Location / [Guernsey](#)

Date / [January 2019](#)

When setting up a Guernsey fund, there are certain practical matters to bear in mind to ensure that the establishment and operation proceed smoothly.

The board of directors

Composition and conduct

The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended (the "POI Law"). Where the entity is a POI Licensee, the POI Law requires each director, controller, partner or manager of the POI Licensee to be a "fit and proper person" to hold that position. Factors such as his/her probity, competence, experience and judgment will go to making this determination. The board of directors of the POI Licensee must be comprised of at least two individuals or appropriate standing and expertise who are sufficiently independent of each other. The GFSC requires a board to be comprised of such number of executive and non-executives as it considers appropriate in the circumstances. The business must be conducted in a prudent manner.

The Licensees (Conduct of Business) Rules 2016 (the "COB Rules"). The COB Rules apply (unless the GFSC specifically agrees) to POI Licensees. Licensees are required to adhere to the 10 "Principles of Conduct of Finance Business" – a statement of the standards expected of a POI Licensee. Under the COB Rules the GFSC expects at least two Guernsey resident directors of a POI Licensee (unless it is administered by another Guernsey firm, in which case just one).

The Finance Sector Code of Corporate Governance (the "Code") is a non-prescriptive set of principles and guidance, expressing the components of good corporate practice against which shareholders and boards, as well as the GFSC, can better assess the degree of governance exercised over companies in Guernsey's finance sector. The Code applies to all POI Licensees and Guernsey funds (whether registered or authorised). The board should be comprised of individuals with an appropriate balance of skills, knowledge and competence in the circumstances, which may require independent non-executive directors. Appendix 1 to the Code provides further guidance for funds.

Guernsey presence requirements

The Companies (Guernsey) Law 2008 (the "Companies Law") does not impose any requirements for the board of directors of a company to be Guernsey residents, or for board meetings to be held in Guernsey. The Companies Law deems a board meeting to be held in the place in which the chairman is present. Thus board meetings can be held with directors located anywhere for Guernsey purposes (although in such circumstances care should be taken with respect to foreign laws which may deem a company to be controlled from a particular jurisdiction based on the location of directors which may have adverse tax and regulatory implications).

As noted above, under the COB Rules the GFSC expects at least two Guernsey resident directors of a POI Licensee (unless it is administered by another Guernsey firm, in which case just one is usually sufficient).

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The Companies Law requires a Guernsey company to have a registered address in Guernsey. Guernsey companies which are not funds and which do not have a corporate services provider need a Guernsey resident director.

Substance

Substance requirements

In November 2017, the EU wrote to the States of Guernsey following the screening conducted by the EU's Code of Conduct Group on Business Taxation (the "Code Group"). The Code Group concluded that Guernsey did not have a "legal substance requirement for entities doing business in or through the jurisdiction". The Code Group were concerned that this perceived lack of legal substance requirement "increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial economic presence".

On the basis of this assessment, the EU proposed including Guernsey, amongst other similarly identified offshore jurisdictions, on a new list of non-cooperating jurisdictions unless Guernsey agreed to introduce changes aimed at evidencing real economic activity and substance for relevant businesses in Guernsey within the required time frame.

In response, Guernsey made a commitment to address the Code Group's concerns in order to avoid being placed on the EU's blacklist of non-compliant jurisdictions and, as a result, the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (the "Regulations"), came into effect on 1 January 2019.

The main impact of the legislation and guidance on a Guernsey tax resident company conducting fund management (note that a fund itself is not caught by the substance requirements) will be to require that the company:

- is directed and managed in Guernsey;
- carries on applicable "core income generating activity" ("CIGA") in Guernsey;
- has an adequate level of appropriately qualified employees in Guernsey (whether or not employed by the company or another entity and whether on temporary or long-term contracts) proportionate to the level of activity carried on in Guernsey;
- has an adequate level of expenditure in Guernsey that is proportionate to the level of that activity carried on in Guernsey; and
- has an adequate physical presence (including offices and/or premises) in Guernsey proportionate to the level of that activity carried on in Guernsey.

Board meetings of the company must be held in Guernsey with "adequate" frequency (having regard to the level of decision-making required of the board) during which there must be a quorum of directors physically present in Guernsey. Strategic decisions of the company must be set at these board meetings and the minutes must record those decisions. The board, as a whole, must have the necessary knowledge and expertise to discharge their duties as a board and all minutes and company records must be kept in Guernsey. The substance requirements have been designed to respect the outsourcing model (which for these purposes includes delegation), although where the company outsources a CIGA it must adequately supervise the outsourced activity. The principal aim of the substance requirements is to ensure that the level of profits that are attributed to the company in relation to its CIGAs are commensurate with its economic activity and economic presence. Accordingly, a company that outsources CIGAs or other activities should ensure that the related fees are appropriately priced such that the resulting net profit attributable to Guernsey is commensurate to the CIGAs undertaken in Guernsey. A company should be able to meet the requirements relating to adequate physical presence and employees where a Guernsey-based administrator or corporate services provider provides the appropriate premises and personnel. Whether these adequacy requirements are met will be a question of fact and degree, taking into account the activities of the company.

Given that the POI Law and the associated rules and guidance issued by the Guernsey Financial Services Commission already require a high level of governance and substance from a regulatory perspective, it is expected that Guernsey companies which conduct fund management will be able to comply readily with the new substance rules in relation to fund management.

A more comprehensive briefing note on the application of the new substance requirements to the funds industry is available [here](#).

Capital Adequacy

The Licensees (Capital Adequacy) Rules 2010 (the "Capital Adequacy Rules") set out the minimum capitalisation requirements for licensing.

For a designated trustee or designated custodian of an open-ended collective investment scheme, minimum net assets of £4,000,000 are required.

For a designated manager of a collective investment scheme, minimum net assets of £100,000 are required.

For an ordinary licensee acting as manager of a collective investment scheme (for example a general partner of a limited partnership), minimum net assets of £10,000 are required.

Regulatory fees

The regulatory fees effective from January 2018 are as follows:

- Fund registration/authorisation fee: £3,435
- Fund annual fee: £3,435
- POI Licensee application fee: £2,322
- POI Licensee (manager of authorised or registered collective investment schemes) annual fee: £1,661
- POI Licensee (designated manager of authorised or registered collective investment schemes) annual fee: £3,322

Certain fund related activities being undertaken may be classified as a regulated activity under The Regulation of Fiduciaries, Administration Businesses and Company Directos, etc. (Bailiwick of Guernsey) Law, 2000 (the "Fiduciaries Law"). If the activity being undertaken does not also require a POI Licence (in which case there is an exemption under the Fiduciaries Law), a specific discretionary exemption may need to be applied for. This costs £1,071. Typical examples of this are where a Guernsey company acts as a "passive" general partner to a fund constituted as a limited partnership, but does not do so by way of business under the POI Law (which therefore does not trigger a POI Licence requirement).



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PLEASE NOTE

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2019