

Practical matters to bear in mind

Service area / [Investment Funds](#)

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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, 2020 (the "POI Law")

Where the entity is a licensee under the POI Law ("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 2021 (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. Subject to the company's memorandum and articles, and any resolutions of the board, the Companies Law deems a board meeting to be held in the place in which the chairman of the meeting 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).

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.

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Economic substance

Guernsey introduced economic substance legislation for accounting periods commencing on or after 1 January 2019. The legislation was introduced to meet a commitment made to the EU Council to address concerns that Guernsey's 0% corporate income tax rate could facilitate offshore structures aimed at attracting profits which do not reflect real economic substance.

Economic substance requirements apply to a Guernsey tax resident company or partnership where and to the extent that it:

- carries on (for its own account or as a partner or member of a partnership) one or more of the following "relevant activities": banking, insurance, fund management, financing and leasing, headquartering, shipping and distribution and service centres;
- is a holding entity and has as its primary function the acquisition and holding of shares or equitable interests in other entities and which carries on no commercial activity; or
- has income (arising or accruing to the company directly or in its capacity as a partner or member of a partnership) from intellectual property assets.

Economic substance legislation does not apply to externally managed Guernsey funds, but can apply to fund managers and certain companies and partnerships owned by funds. Further details on the application of Guernsey's economic substance legislation to funds can be found [here](#).

Capital Adequacy

The Licensees (Capital Adequacy) Rules 2021 (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 administrator 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 1 January 2021 are as follows:

- Fund registration/authorisation fee: £3,507
- Fund annual fee: £3,507
- POI Licensee application fee: £2,371
- POI Licensee (manager of authorised or registered collective investment schemes) annual fee: £1,696
- POI Licensee (designated administrator of authorised or registered collective investment schemes) annual fee: £3,392

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, 2020 (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 £1,093.



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PLEASE NOTE

Please note that this briefing is only 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.
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