Implications of recent changes to the AIC Code for Channel Islands companies

Service area / Corporate
Location / Guernsey, Jersey
Date / February 2020

Many closed-ended Guernsey and Jersey investment companies admitted to the London Stock Exchange choose to meet their corporate governance obligations, or to demonstrate their commitment to good governance, by reporting against the AIC Code, a framework of best practice in respect of the governance of investment companies published by the Association of Investment Companies ("AIC"). This is due to the fact that corporate governance within the closed-ended investment company industry differs from other companies and the AIC Code is tailored accordingly.

In addition, the AIC Code is endorsed by the Financial Reporting Council ("FRC") and the Guernsey Financial Services Commission ("GFSC") and is supported by the Jersey Financial Services Commission ("JFSC").

In February 2019, the AIC issued a revised code ("Revised Code"). Under the Revised Code, the 21 principles and detailed recommendations, were replaced with adaptations of the Principles and Provisions of the UK Corporate Governance Code ("UK Code") issued by the FRC.

Some of the notable changes included in the revised AIC Code (principally to align with the UK Code) include:

- directors of all investment companies are now required to stand for annual re-election (irrespective of whether this is required under the company's articles of incorporation);
- where there is a 'significant proportion' of votes against a resolution at any general meeting, the board is required to explain what actions it intends to take to understand the reason behind the vote result (the "significant proportion" now being fixed at 20 per cent). In addition, the company will need to publish an update on what impact the feedback has had on board decisions and any proposed actions or resolutions. The update must be published within six months of the shareholder meeting, with a final summary included in the annual report and, if applicable, in the explanatory notes to resolutions at the next shareholder meeting; and
- the board must now take steps to understand the views of the company's other key stakeholders and describe in the annual report how their interests and the matters set out in section 172 (duty to promote the success of the company) of the UK Companies Act 2006 have been considered by the board in its discussions and decision making. This requirement applies to Guernsey and Jersey companies, even though it refers to a UK statute that would not otherwise apply to them.

Unlike the UK Code, the Revised Code permits the chair to remain in post beyond nine years from the date of first appointment by the board. However, the board is required to determine and disclose a policy in respect of the tenure of the chair, which must include a clear rationale for the expected tenure and explain how it is consistent with the need for regular refreshment and diversity.

In another area of divergence from the UK Code, the Revised Code permits the chair to be a member (but not the chair) of the audit committee provided they were independent on appointment. If the chair of the board is a member of the audit committee, the board must explain in the annual report why it believes this is appropriate.

The Revised Code applies to accounting periods beginning on or after 1 January 2019 and so, if they have not done so already, the boards of Guernsey or Jersey companies that apply the AIC Code should review their existing corporate governance arrangements and consider whether any changes are required to ensure that the requirements of the Revised Code are met.

Subscribe for more

FIND US

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272
E guernsey@careyolsen.com

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900
E jerseyco@careyolsen.com

FOLLOW US

Subscribe for more

Visit our corporate team at careyolsen.com

PLEASE NOTE

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.