

Guernsey Financial Services Commission

**Exemption of Directorships Connected to Authorised
and Registered Collective Investment Schemes**

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

Issued 8 December 2022

Contents

Introduction.....	4
Background.....	4
Key Proposal.....	6

Responses to this Consultation Paper are sought by 23 January 2023.

We welcome and encourage respondents to provide feedback or comment on any section and question. Feedback may be provided via the Consultation Hub section of the Commission's website (www.gfsc.gg).

Introduction

This consultation paper proposes the making of 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. This consultation complements a recent Policy & Resources Committee consultation on revisions to the supervisory framework surrounding the six directorship exemption.¹

It should be noted that the proposals in this consultation paper are not intended to affect the scope of any current exemption under section 3 of the Fiduciaries Law.

The Commission welcomes feedback and comments on the proposals set out in this Consultation Paper.

Background

The Fiduciaries Law and Licensing Exemption

The Fiduciaries Law prohibits the carrying out of certain regulated activities, by way of business, unless such activities are carried out by a licensed person or such activities are exempted activities as described under section 3 of the Fiduciaries Law. Acting as a director of a company is a regulated activity under the Fiduciaries Law but in certain circumstances this activity may be exempt. One such circumstance, for example, is provided for under section 3(1)(e) of the Fiduciaries Law, which exempts the activity of acting as a director of a “supervised body”. This exemption applies to directorships of licensed companies and collective investment schemes registered or authorised under the Protection of Investors (Bailiwick of Guernsey) Law, 2020. Another example of exemption is the provision under section 3(1)(g) of the Fiduciaries Law which exempts the activity of acting, where the person is an individual, as a director of not more than six companies, (the “six directorship exemption”). In both examples director activity remains within the scope of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “Proceeds of Crime Law”).

Director Registration Proposals

The Policy & Resources Committee has recently published a consultation paper (the “P&R Consultation Paper”) proposing that directors using the six directorship exemption should be required to register with the Commission, coming within the ambit of the registration

¹ 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>

framework for prescribed businesses under Schedule 5 to the Proceeds of Crime Law. The proposal includes certain exemptions from the requirement to register, including the exemption of a director of a company administered by a licensed fiduciary, that also acts as the company's resident agent.

The P&R Consultation Paper also highlights the Commission's intention to review the future treatment of directorships of companies connected to registered and authorised collective investment schemes vis-à-vis the six directorship exemption.

Directorships of Companies Connected to Registered and Authorised Collective Investment Schemes

A typical collective investment scheme structure may comprise a number of companies, and other entities, facilitating the collective investment scheme's operation and investment activity. Often the companies within one structure will have common directors (and will be administered by the same licensed firm responsible for ensuring compliance with AML/CFT obligations). The treatment of each directorship activity, however, may not be the same under the Fiduciaries Law. For example, an individual, acting by way of business, may hold a directorship of a registered collective investment scheme and this activity would be exempt under section 3(1)(e) of the Fiduciaries Law because the collective investment scheme meets the definition of a supervised body. Activity in respect of the same individual's directorships of other companies, which are connected to the collective investment scheme but which do not meet the definition of a supervised body, would not fall under the same exemption provision, but may instead use the six directorship exemption. Where directorships exceed six in number, and no other exemptions apply, an individual would be required to hold a Personal Fiduciary Licence.

Objective

The proposals in this consultation paper seek to achieve the following two objectives:

1. To provide a clear and specific exemption for directors of companies that form part of the wider structure of a registered or authorised collective investment scheme - recognising the mitigation of risk associated with the connection to a regulated fund and the oversight of a licensed administrator - where such directors may otherwise, in some cases, have relied on the more general six directorship exemption or been required to hold a Personal Fiduciary Licence.
2. To create greater alignment between the scope of those directorships relying on the six directorship exemption and those that will be required to register under the proposals of the P&R Consultation Paper.

Key Proposals

It is proposed that regulations are made to add a new category of activity exempted from the licensing requirement as a new sub-section (1)(ad) to section 3 of the Fiduciaries Law. This is described with draft language as follows (or in similar terms)² for respondents' consideration:

“(ad) acting as a director of a company where–

(i) the company is –

(A) connected to a collective investment scheme authorised or registered under section 8 of the Protection of Investors Law;

(B) administered, where being administered includes appointment as a resident agent (within the meaning of the Companies (Guernsey) Law, 2008), by the same person appointed as the designated administrator (within the meaning of the Protection of Investors Law) of the connected collective investment scheme described in item A (“administering person”); and

(C) subject to the requirements to forestall, prevent and detect money laundering and terrorist financing of that administering person where compliance with such requirements is supervised by the Commission; and

(ii) the director –

(A) is an individual; and

(B) acts either as a director of, or a director of the general partner of, the connected collective investment scheme described in subparagraph (i).

For the purposes of this paragraph a company is connected to a collective investment scheme where it directly facilitates the management, operation or investment activity of the collective investment scheme.”

Q: Do you have any comments on the key proposal highlighted?

² The Policy & Resources Committee may by regulation add any exemption to section 3 of the Fiduciaries Law. The regulations may also contain consequential, incidental, supplementary, savings, transitional or other ancillary provisions that may appear to be necessary or expedient.