

Bailiwick Mind and Management Consultation Paper

Closed 21 Mar 2022

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Contact

Investment, Fiduciary and Pension Division

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We asked

In our March 2022 Consultation Paper we asked for feedback on proposals to issue guidance under the Supervisory Laws. The proposed guidance sought to clarify that, in line with the current practice of the Commission, maintenance of local mind and management is a relevant factor in the Commission's assessment of the prudent conduct of business of a licensee. This Feedback Statement summarises the responses received, provides the Commission's response and sets out the changes that are being made to the Fiduciary Rules and Guidance, 2021 and the Licensees (Conduct of Business) Rules and Guidance, 2021 (together "the Rules").

You said

25 responses were received to our consultation from a cross-section of industry participants. Ten respondents indicated support for the proposal, three respondents objected to the proposal and a further 12 respondents

neither indicated support or objection to the proposal but sought further clarification or suggested amendments to the proposal.

The Commission would like to thank all respondents for taking the time to read and respond to this consultation.

There were a number of common or similar themes to questions and suggestions and these are addressed as follows:

Drafting as a rule and addition of a definition of senior executives

Several respondents indicated that the proposed guidance left scope for different interpretation and sought greater clarity particularly around the definition of “senior executives”.

Commission response

To provide a greater level of detail and increased certainty around the policy the originally proposed guidance has now been redrafted and is presented in the form of a rule and a related definition for “senior executives” has been added to the Rules to mean the chief executive and persons holding a supervised role exercising day-to-day managerial functions of the licensee.

Direction of the business

Some respondents expressed concern that the proposal may overlap with minimum licensing criteria on the effective direction of the business and board composition.

Commission response

The addition of the definition of “senior executives” clarifies that this proposal does not relate to the direction of the business but to the day-to-day management and prudent conduct of the business.

Level of prescription and certainty

Some respondents asked for greater certainty on the Commission's interpretation of the proposed policy and asked that the Commission prescribe the number of Bailiwick-based senior executives required for each type of business.

Commission response

It is the Commission's expectation that existing licensees will already have sufficient Bailiwick-based senior executives to prudently manage day-to-day operations. The Commission does not plan to undertake a wholesale review of the management structure of existing licensees and does not expect licensees to undertake specific reviews they would not ordinarily undertake as a specific result of this change. Licensees should however consider this rule when reviewing management structures during the ordinary course of business.

Relation to Tax Substance Requirements

Several respondents sought clarification on whether the proposal related to the Bailiwick's Tax Substance Requirements or if the proposal might create any element of conflict with this regime.

Commission response

The proposed rules apply only to the regulation of firms licensed under the Supervisory Laws. The rules serve a distinctly different and separate purpose to tax based substance requirements and therefore, for the very limited number of entities within scope of both regimes, compliance with the respective requirements may be achieved in parallel with no arising conflict.

Licensee administered by other firms in the Bailiwick

Some respondents sought to confirm that administered licenses would be outside the scope of the proposals.

Commission response

As already stated, the proposed changes are not intended to necessitate any wholesale change in the organisation of current licensees, for the avoidance of doubt, however, administered licensees have been expressly excluded from the new rule.

Other regimes

Some respondents questioned whether the proposed policy was intended to apply to other sectors.

Commission response

The new rules apply only to entities licensed under the Fiduciaries Law and entities licensed under the Protection of Investors Law.

Scope of Commissions rule-making powers

One respondent suggested that the proposal went beyond the scope and spirit of the relevant Supervisory Laws.

Commission response

The Commission does not agree with this view. It is a minimum criterion for licensing, in both relevant Supervisory Laws, that business be conducted in a prudent manner. The Commission's view is that the adequacy of management of the Bailiwick-based operations of licensees conducting regulated business in or from within the jurisdiction is entirely within the scope of this criterion.

We did

The original guidance wording proposed in the Consultation Paper was as follows:

“When assessing the adequacy and effectiveness of management oversight and control of a licensee, the Commission will take into account the number of senior executives resident in the Bailiwick, having regard to the nature, size and complexity of the licensee.”

After taking into account comments received during the consultation the relevant rules are to be amended as follows:

The Licensees (Conduct of Business) Rules and Guidance, 2021

A new rule 2.1(8) is to be added as follows:

(8) *The board of a licensee, other than a licensee administered by another firm in the Bailiwick, must appoint such number of Bailiwick-based senior executives as is commensurate with the nature, size and complexity of the licensee’s activities in the Bailiwick, and the prudent conduct of its business.*

In rule 13.1(2) the following definition will be added:

“senior executives” means the chief executive and persons holding a supervised role exercising day-to-day managerial functions of the licensee;

The Fiduciary Rules and Guidance, 2021

A new rule 2.1.2 (2) (d) is to be added as follows:

(2) *The Board of a licensed fiduciary –*

...

(d) *must appoint such number of Bailiwick-based senior executives as is commensurate with the nature, size and complexity of the licensed fiduciary’s activities in the Bailiwick, and the prudent conduct of its business.*

In rule 6.1(2) the following definition will be added:

“senior executives” means the chief executive and persons holding a supervised role exercising day-to-day managerial functions of the licensee;

The amendments to the Rules will be effective from 10 June 2022.

Links:

- [Consolidated Fiduciary Rules and Guidance, 2021](#)
 - [Consolidated Conduct of Business Rules and Guidance, 2021](#)
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Overview

Bailiwick Substantial Mind and Management

The Protection of Investors (Bailiwick of Guernsey) Law, 2020

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (together “the Supervisory Laws”)

The purpose of this Consultation Paper is to seek feedback from all interested parties on proposals to issue guidance under the Supervisory Laws. The proposed guidance seeks to clarify that, in line with the current practice of the Commission, maintenance of local mind and management is a relevant factor in the Commission’s assessment of the prudent conduct of business of a licensee.

What happens next

This Consultation will be open for a period of 6 weeks, with a closing date for responses of 21 March 2022.

Following the consultation period, the Commission will collate and consider responses provided and feedback will be issued.

Related

[!\[\]\(feabb98897b440bc8695a03336a6e2df_img.jpg\) Bailiwick Mind and Management Consultation Paper](#)

Audiences

Anyone from any background

BAILIWICK MIND AND MANAGEMENT CONSULTATION PAPER

The Protection of Investors (Bailiwick of Guernsey) Law, 2020
The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc
(Bailiwick of Guernsey) Law, 2020

7 FEBRUARY 2022



Guernsey Financial
Services Commission

Bailiwick Substantial Mind and Management

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In considering applications for and the ongoing retention of a licence issued under the Supervisory Laws, the Commission must be satisfied that the statutory minimum criteria for licensing will be met on an ongoing basis.

It is a minimum criterion for licensing that a licensee will conduct business in a prudent manner.

In prudently conducting licensed business in or from within the Bailiwick, the Commission expects that licensees will ensure that there is a level of local oversight and management of operations within the Bailiwick commensurate with the scale and nature of the activity carried out.

Accordingly, the Commission proposes to add the following guidance to both the Licensees (Conduct of Business) Rules and Guidance, 2021¹ and the Fiduciary Rules and Guidance, 2021².

Bailiwick Substantial Mind and Management

“When assessing the adequacy and effectiveness of management oversight and control of a licensee, the Commission will take into account the number of senior executives resident in the Bailiwick, having regard to the nature, size and complexity of the licensee.”

Q1: Do you have any comments on the proposed amendment to the Licensees (Conduct of Business) Rules and Guidance, 2021?

Q2: Do you have any comments on the proposed amendment to the Fiduciary Rules and Guidance, 2021?

¹ Guidance will be added to section 2.1

² Guidance will be added to section 2.1

Providing Feedback

Responses to this Consultation Paper are requested by 21 March 2022.

Responses should be submitted through the Commission's Consultation Hub, which can be found at <https://consultationhub.gfsc.gg/>.

Next Steps

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