

Clarification on the scope of licensing requirements for Guernsey directors

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Certain activities, when carried on by way of business, in or from within the Bailiwick of Guernsey are prohibited unless carried on under the authority of and in accordance with a licence issued by the Guernsey Financial Services Commission (the **Commission**) pursuant to the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (the **Fiduciaries Law**). One such regulated activity is acting as a director of any company or incorporated body or as partner of any partnership, whether incorporated, registered or established in or under the laws of the Bailiwick of Guernsey or elsewhere.

A number of exemptions are available under the Fiduciaries Law, although there has long been debate about the scope of a number of such exemptions. Following discussion with industry, the Commission recently provided clarification. For your ease of reference we have extracted a few salient aspects below:

Established Place of Business

The "established place of business" exemption is aimed at trading companies which have premises and staff of their own in the Bailiwick and is not intended to cover companies which have an office in the Bailiwick at which is transacted only such administrative business as is necessary to ensure compliance with applicable companies legislation.

Group Appointments

The Commission will analyse directorships based on each separate legal entity. Thus, where a directorship of a "main" relationship company in a group (eg a listed or regulated parent) carries with it directorships of other group companies, it is necessary to consider each company in that relationship in its own right and if the "main" relationship company is one in respect of which an exemption would apply, then the related appointments will also qualify if they are eligible for exemptions in their own right or relate to "subsidiaries" for Fiduciaries Law purposes

but not otherwise. This highlights the need for caution in relation to "group" appointments, particularly where there may be board appointments at the level of investments which are not "subsidiaries" for Fiduciaries Law purposes. Similarly, incorporated cells in an incorporated cell company are analysed separately by the Commission and, for example, each count as a separate directorship for the purposes of the "six directorships" exemption.

Conversely, remuneration at a single point eg at the level of the "main" relationship company, will not mean that any ancillary board appointments can be considered as not being "by way of business" for Fiduciaries Law purposes merely because they are not separately remunerated.

Funds

The exemption for acting as a director of a "fund" applies only to Guernsey "authorised" funds. Collective investment schemes in other jurisdictions do not qualify regardless of their regulated status in such jurisdictions. In addition, Guernsey "registered" funds do not currently qualify for the exemption. It is anticipated that this will be remedied in future legislative revisions. In the meantime, the Commission will entertain applications for specific exemptions in this regard and an individual may make a single application in respect of all "registered" fund appointments relevant to him or her.

Other Considerations

AML remains a key focus area for the Commission and they have been at pains to re-iterate to directors that financial crime obligations apply to all directorships regardless of regulated status.

In addition there is a reminder from the Commission that the "six directorships" exemption may be revoked in whole or in part in relation to any person in respect of whom the Commission has concerns.

Detailed FAQ guidance is available on the Commission's website <https://www.gfsc.gg/industry-sectors/fiduciary/guidance/acting-director>

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