

Q&A - New AIC Code and implications for LSE-listed offshore companies

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This Q&A sets out an overview of the principal changes included in the revised version of the AIC Code of Corporate Governance (**AIC Code**) and why this will be relevant for boards of directors of certain Guernsey companies.

What is the AIC Code?

The AIC Code is a framework of best practice in respect of the governance of investment companies. The AIC Code has been endorsed by the Financial Reporting Council (**FRC**) and the Guernsey Financial Services Commission (**GFSC**) and is supported by the Jersey Financial Services Commission (**JFSC**).

Why is this relevant to Guernsey companies?

The revised AIC Code may be relevant to boards of directors of Guernsey companies whose shares are quoted or listed on any of the London Stock Exchange's (**LSE**) markets.

Investment companies whose shares are admitted to the Main Market of the LSE with a Premium Listing may choose to use the AIC Code to meet their obligations under the UK Corporate Governance Code (**UK Code**) issued by the FRC.

Companies whose shares are admitted to the Main Market of the LSE with a Standard Listing or to the Specialist Funds Segment are not obliged to comply with the UK Code or AIC Code, but often they will do choose to use the AIC Code in order to demonstrate a commitment to high standards of corporate governance.

Investment companies whose shares are quoted on AIM may choose to use the AIC Code as their "recognised corporate governance code" in order to meet the requirements of AIM Rule 26.

Why choose the AIC Code?

The AIC Code is popular with closed-ended Guernsey investment companies because corporate governance within the closed-ended investment company industry differs from other companies and the code is tailored accordingly.

Guernsey investment companies which report against the AIC Code are not required to report separately against the Finance Sector Code of Corporate Governance (**Guernsey Code**) issued by the GFSC.

Why is the AIC issuing a revised AIC Code?

In order to retain the existing endorsement of the AIC Code by the FRC, the Association of Investment Companies (AIC) have worked to align the AIC Code with the new version of the UK Code which was published in July 2018. The revised AIC Code was published in February 2019.

What has changed?

There is now just one AIC Code which covers UK, Guernsey and Jersey member companies.

In place of the previous 21 principles and detailed recommendations, the revised AIC Code (set out in Sections 5 to 9) adapts the Principles and Provisions set out in the UK Code to make them relevant for investment companies. For details on some of the changes brought in by the new UK Code, please follow this link to our previous client briefing: **Guernsey Boards should take note of recent updates to UK corporate governance codes.**

Because the AIC Code closely reflects the Principles and Provisions of the UK Code, there is no longer a need for the AIC Corporate Governance Guide (the **AIC Guide**) which previously mapped the recommendations of the Code to the AIC Code. The AIC Guide has been withdrawn.

What are the key differences to the UK Code?

Adapted Principles and Provisions of the UK Code

Although the AIC Code closely reflects the Principles and Provisions of the UK Code, these are adapted by the AIC to make them relevant for investment companies. Drafting notes are included to highlight where content from the UK Code has been incorporated in whole or in part, together with the AIC's own Supplementary Guidance. Directors of Guernsey investment companies are therefore urged to carefully review the whole of the revised **AIC Code**.

Reporting against Section 172 of the UK Companies Act 2006

The revised AIC Code has retained the UK Code requirement that the board should 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 in board discussions and decision-making. This applies irrespective of where the company is domiciled, provided it does not conflict with local company law. This therefore represents a significant change for boards of Guernsey investment companies to consider in addition to their existing duties under Guernsey law.

Tenure of the Chair

Unlike in the UK Code, the revised AIC Code permits the chair to remain in post beyond nine years from the date of first appointment by the board. However, notwithstanding this flexible approach, each board should determine and disclose a policy on the tenure of the chair. A clear rationale for the expected tenure should be provided, and the policy should explain how this is consistent with the need for regular refreshment and diversity. The Supplementary Guidance states that a more flexible approach to chair tenure will help companies manage succession planning in the context of the sector's different circumstances, whilst at the same time still address the need for regular refreshment and diversity.

Membership of Audit Committee

Unlike in the UK Code, the revised AIC Code permits the chair to be a member of the audit committee provided he or she was independent on appointment (although the prohibition on the chair of the board being chair of the audit committee is retained). If the chair of the board is a member of the audit committee, the board should explain in the annual report why it believes this is appropriate.

When does the new AIC Code apply?

The new AIC Code applies to accounting periods beginning on or after 1 January 2019 and so, if they have not done so already, Guernsey boards are therefore urged to review their existing corporate governance arrangements, determine which code is applicable to their companies and if they are ready for the changes.

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