

Principal changes in the revised AIC Code of Corporate Governance are relevant for boards of directors of Guernsey and Jersey companies

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The AIC Code is a framework of best practice in respect of the governance of investment companies published by the Association of Investment Companies (AIC).

Founded in 1932, the AIC represents a broad range of closed-ended investment companies, incorporating investment trusts, offshore investment companies, real estate investment trusts and venture capital trusts.

Guernsey and Jersey Companies

The revised AIC Code may be relevant to boards of directors of Guernsey and Jersey 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 apply the AIC Code to meet their obligations under the UK Corporate Governance Code (UK Code) issued by the Financial Reporting Council (FRC).

The AIC Code has been endorsed by the FRC and the Guernsey Financial Services Commission (GFSC) and is supported by the Jersey Financial Services Commission (JFSC). One of the virtues of using Channel Islands vehicles for listed investment companies is their legal and regulatory flexibility to align with UK listing and corporate governance regimes.

Companies whose shares are admitted to the Main Market of the LSE with a Standard Listing or to the Specialist Fund Segment are not obliged to comply with the UK Code or AIC Code, but often they will choose to report against the AIC Code in order to demonstrate a commitment to high standards of corporate governance. Investment companies whose shares are quoted on AIM, the LSE's international market for smaller growing companies, may choose to use the AIC Code as their 'recognised corporate governance code' in order to meet the requirements of Rule 26 of the AIM Rules for Companies.

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

Externally managed Guernsey and Jersey investment companies may find that certain UK Code principles are not relevant (for example, provisions relating to the role of a chief executive; executive directors' remuneration; and the need for an internal audit function).

The GFSC published the Finance Sector Code of Corporate Governance (Guernsey Code) in 2011. The introduction to the Guernsey Code states that companies that report against the UK Code or the AIC Code are also deemed to meet the Guernsey Code. Therefore, Guernsey investment companies that report against the AIC Code are not required to report separately against the Guernsey Code.

In addition, the JFSC commends the AIC Code as a tool available to Jersey-domiciled investment companies to promote good compliance and best business practice. The JFSC believes that application of the AIC Code will help boards do a better job by leading to improved performance over time and a reduced risk of failure.

Revised Code

In order to retain the existing endorsement of the AIC Code by the FRC, the 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.

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 adapts the Principles and Provisions set out in the UK Code to make them relevant for investment companies. As such, there has been a considerable change in the format and layout of the AIC Code, which can make comparisons between old and new less straightforward even though much of the substance of the previous version has been retained.

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

- The extension of the requirement for annual re-election of directors to all investment companies and not just those included in the FTSE 350
- The 'significant proportion' of votes against a resolution at any general meeting requiring the company to then explain what actions it intends to take to understand the reason behind the vote result now being fixed at 20 per cent. In addition, an update will also need to be published on what impact the feedback has had on the decisions the board has taken and any actions or resolutions now proposed. The update must be published no later than six months after 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
- The 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 is an extension to the previous requirement to describe the steps taken as regards shareholder engagement and applies irrespective of where the company is domiciled, provided it does not conflict with local company law.

In the context of Guernsey and Jersey investment companies, the position under their respective local company law regimes can be summarised briefly as follows:

- The customary laws of Guernsey and Jersey with respect to directors' fiduciary and other duties is substantially based on English common law (as it stood prior to the incorporation of the English common law duties into statute) and English and Commonwealth authorities are persuasive in courts of both Islands
- Guernsey and Jersey companies operate under their own jurisdiction's company law regime (being, respectively, the Companies (Guernsey) Law, 2008 and the Companies

(Jersey) Law 1991) and do not have a statutory equivalent to section 172 of the UK Companies Act 2006

- As reporting against section 172 of the UK Companies Act 2006 does not conflict with local company law, this new requirement represents a significant change for boards of Guernsey and Jersey investment companies to consider in addition to their existing duties under Guernsey and Jersey law
- The requirement for the board to assess emerging as well as principal risks and disclose in the annual report that it has completed this assessment, including a description of its principal risks, what procedures are in place to identify emerging risks, and an explanation of how these are being managed or mitigated.

The AIC recommends that self-managed investment companies applying the AIC Code should also have regard to those UK Code Principles and Provisions that have either been amended or deleted from the AIC Code, which are helpfully set out in a table in Appendix 3.

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

Key Differences with UK Code

As noted above, 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.

Ten out of the 18 Principles of the UK Code are incorporated without amendment in the AIC Code and of the 8 modified Principles these are either due to their non-applicability to investment companies in their entirety (such as the absence of a 'workforce' (UK Code Principle E)) or are adapted with minor amendments. The main areas of variance with the UK Code are found in the detailed Provisions against which investment companies will be obliged to report on a 'comply or explain' basis.

Directors of Guernsey and Jersey investment companies are therefore urged to review carefully the whole of the revised AIC Code.

In addition, unlike the UK Code, the revised AIC Code also permits the chair to remain in post beyond nine years from the date of first appointment by the board. This was reported as representing an unexpected victory when it was announced that the AIC had persuaded the FRC that investment companies are a special case and require more flexibility than normal businesses when determining the appropriate length of time that chairs can serve.

However, notwithstanding this flexible approach, each board is required under the AIC Code to 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.

Also, unlike 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.

This divergence from the UK Code is also seen as another concession to the AIC, which said that investment company boards are often around one third of the size of mainstream corporate boards and that banning the chair from involvement was impractical, particularly as any serious issue with investment valuations would be referred to the main board anyway.

Looking Forward

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 and Jersey boards are urged to review their existing corporate governance arrangements, determine which code is applicable to their companies and consider if they are ready for the changes.

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