



Guernsey Association of Trustees

BY EMAIL ONLY TO: policyandresources@gov.gg and AMLCFT@gfsc.gg

Response to Policy & Resources Committee Consultation Paper on Revisions to the Supervisory Framework Surrounding the Six Directorship Exemption dated 23 November 2022 (the Consultation Paper)

We have used the same defined terms as used in the Consultation Paper.

1. Introduction

We have reviewed the Consultation Paper and carefully considered the proposed revisions to legislation set out in it. We are grateful for the opportunity to provide feedback.

We note that the proposals will impact only those individuals who currently rely on the six directorship exemption and that the proposals set out in the Consultation Paper are not intended to affect the other exemptions under the Fiduciaries Law.

GAT is the industry representative body for fiduciary licence holders in Guernsey and our objects include representing the Guernsey fiduciary sector in discussions with other stakeholders. Our membership largely consists of trust and corporate service providers and individuals in the Bailiwick who hold either full or personal fiduciary licences issued by the Commission under the Fiduciaries Law. Our membership also extends to lawyers, accountants, compliance professionals and other individuals locally with an interest in the fiduciary industry.

The proposals set out in the Consultation Paper do not therefore affect our core membership, i.e. fiduciary licensees, and our remit does not extend to representing individuals who currently rely on the six directorship exemption.

However, we are conscious that a large number of those individuals who will be impacted by the proposals are unlikely to be represented by an industry association and are unlikely to be aware of the Consultation Paper and/or fully appreciate its impact on them. As a responsible association with an interest in ensuring that the Bailiwick's supervisory framework remains effective and adequate in the eyes of MONEYVAL, whilst also ensuring the Fiduciary Law and the exemption regime remains fair, reasonable and fit for purpose, we have chosen to provide feedback on the proposals.

2. Views on the proposals surrounding the six directorship exemption (paras. 16-21 and 24-25 of the Consultation Paper)

(a) General comments

We understand the rationale for the proposals and, in principle, consider that the proposed registration requirement is a proportionate way to demonstrate the effectiveness of the Bailiwick's supervisory framework to MONEYVAL in respect of those Individual Directors who ought to be subject to AML/CFT requirements.

However, we are concerned that the proposals will have unintended consequences and that the registration requirements for Individual Directors will extend to individuals who should fall outside



Guernsey Association of Trustees

the regime on the basis that their directorship does not present an increased AML/CFT risk to the Bailiwick, notably:

- directors of family offices within the Bailiwick, many of which are unregulated (and not required to be regulated) will need to register and provide information to the Commission regarding the families they serve;
- directors of overseas trading companies, e.g. where an individual has moved from the UK to Guernsey and retains their directorship(s) of a UK business(es), or where individuals work remotely for overseas businesses (which is becoming increasingly common);
- directors of funds regulated in overseas jurisdictions; and
- directors of family-owned businesses where ownership is divided between several members of the family each of whom might hold (or have an interest in) less than 50% of the equity share capital (the current wording of section 3(1)(d) suggests that more than 50% share needs to be held by one individual (in order for the exemption to apply) as (i), (ii) and (iii) are alternatives).

In particular, we are concerned that the registration requirement, and the consequences of registration, will make the Bailiwick less competitive and that it will become unattractive for family offices and Guernsey resident directors of overseas companies. This directly conflicts with promotional work done by Locate Guernsey, We Are Guernsey and other stakeholders (including members of the fiduciary industry) in attracting talent and business to the Bailiwick.

(b) Data protection issues

We also have concerns that the additional obligations of (and consequences for) directors of overseas companies will cause them issues from a data protection perspective, firstly due to the additional legal obligations on them with regard to protecting personal data collected, and secondly where the overseas company (or any overseas directors or beneficial owners) refuse to share personal data with the Individual Director on data protection grounds (on the basis of their rights under the legislation in the overseas jurisdiction). In such circumstances, the director would be forced to step down.

(c) Our suggestion – expand the scope of the exemptions

Our suggestion would be to expand the scope of the exemptions under section 3 of the Fiduciaries Law, which for the most part are based on the original regulation of fiduciaries legislation brought in over 20 years ago. To better reflect modern practices, whilst still ensuring the reputation of the Bailiwick is preserved and AML/CFT risks minimised, we suggest the following activities are added to section 3 of the Fiduciaries Law as additional exemptions¹, or that they are added to the categories

¹ These new categories of exempted activity could be added by way of regulation at the same time as the new category for directorships connected to authorised and registered collective investment schemes which is being separately consulted on by the Commission.



Guernsey Association of Trustees

of Individual Directors who are exempted from the new registration requirement under the exemptions proposed in the Consultation Paper (at para. 22):

1. acting as a director of a family office* with its place of business in the Bailiwick, or where the family is resident in the Bailiwick;

*We would be happy to discuss a definition of the term “family office” with the Committee and the Commission.

2. acting as a director of a trading company registered or incorporated in an Appendix C jurisdiction;
3. acting as a director of a fund regulated in an Appendix C jurisdiction; and
4. acting as a director of a company where more than 50% of the equity* in aggregate is held by (or for the benefit of) one or more of:
 - (i) the director, as beneficial owner;
 - (ii) any close relative of the director, as beneficial owner;
 - (iii) the trustees of a trust of which a person mentioned in (i) or (ii) above is a beneficiary; and/or
 - (iv) a foundation of which of which a person mentioned in (i) or (ii) above is a beneficiary.

*As an alternative, the threshold could be 25% held by (or for the benefit of) one of (i) or (ii) above to align with the concept of beneficial ownership under the AML/CFT framework.

The above reflects a risk-based approach to the exemptions which is consistent with the risk-based approach of the Bailiwick’s wider AML/CFT framework.

3. Views on the proposed related exemptions (para. 22 of the Consultation Paper)

In addition to broadening the categories of individuals who should be exempted from the new registration requirements (as an alternative to expanding the exemptions under section 3 of the Fiduciaries Law) (see 2(c) above), we consider that the term “administered by a CSP” should include where the administration services are limited to company secretary/registered office-resident agent only (clarificatory wording in the legislation would be helpful to avoid ambiguity). This is on the basis that a CSP will have AML/CFT obligations (i.e. the exemption should include any company where a CSP is subject to AML/CFT obligations).

4. Additional comments

As noted in our introduction, we consider that the majority of individuals who will be impacted by the proposals in the Consultation Paper will be outside the finance industry and may not be aware of the proposals (through an industry association or otherwise).



Guernsey Association of Trustees

We would suggest that given the wide impact of the proposals, coverage through local press and radio, and by way of flyers to all Guernsey households, would be appropriate to ensure that all affected individuals are aware of their new obligations.

If you should have any queries in respect of any of our comments or wish to discuss the points raised, please do not hesitate to contact us.

Submitted on 16th January 2023