

Guernsey's new Director Registration Regime

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Guernsey has recently introduced a registration regime (the “**Director Registration Regime**”) for persons relying on the “**Six Directorships Exemption**”, under which directors are exempted from the need to obtain a personal licence under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (the “**Fiduciaries Law**”).

It is essential that directors determine whether they are caught by the Director Registration Regime and, if so, familiarise themselves with its requirements and register themselves in advance of the **1 October 2023** registration deadline.

What is the Six Directorship Exemption?

Acting as a director of a company or incorporated body (whether incorporated in or under the laws of the Bailiwick of Guernsey or elsewhere) by way of business¹ is a regulated activity under the Fiduciaries Law. This applies to any person acting as a director “in or from within the Bailiwick”.

There are various exemptions to the licensing requirement, set out in section 3(1) of the Fiduciaries Law. The Six Directorships Exemptions is essentially a “residual” exemption: a director is permitted a maximum of six directorships in respect of which no other exemption is available under section 3(1) of the Fiduciaries Law.

¹ A director will be considered to be acting “by way of business” if he or she receives any income, fee, emolument or other consideration in money or money's worth for so acting

It is important to remember that:

- the new Director Registration Regime and supervisory framework only impacts those individuals who rely on the Six Directorships Exemption; and
- the Six Directorships Exemption only applies to directorships not covered by any of the other statutory exemptions described herein.

The Director Registration Regime was introduced at the same time as the list of exemptions from the licensing regime was expanded. Please see our [briefing note](#) which sets out in detail the expanded set of exemptions.

To whom does the Director Registration Regime apply?

A director will be subject to the Director Registration Regime where he or she relies on the Six Directorships Exemption and any one or more of *those six directorships* is in respect of a company that is neither:

- administered by a Bailiwick licensed fiduciary (which acts as the resident agent of the company); nor
- registered under the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

When, where and how do you register?

The Director Registration Regime commenced on 8 July 2023. Any director to whom the Director Registration Regime applies (a “**Registrable Director**”) must register before the end of the transition period (which ends on 1 October 2023).

Registration is made with the Guernsey Financial Service Commission (the “**Commission**”).

Registration is a two stage process:

- Stage 1: a Registrable Director must complete a “**DRR Registration Form**”, to be submitted to the Commission via email; then
- Stage 2: when advised to do so by the Commission, a Registrable Director must complete a Director Registration Regime Return (Form 155) (the “**DRR Return**”) via the Commission’s online submissions portal.

How long does it take?

The Commission expects to respond within seven calendar days of receiving the DRR Registration Form.

The Commission will confirm registration once both stages of the registration process are complete. Registration is private, so the names and details of registered directors are not published on the Commission’s website.

How much does it cost?

Registration costs £75 (to be paid at the same time as the submission of the DRR Registration Form). There is an annual fee of £75.

What are the ongoing registration requirements?

Directors registered under the Director Registration Regime (a “**Registered Director**”) must provide to the Commission each year a statement of their directorships using the DRR Return. These will be made available for completion annually on 30 September for submission by 14 November.

Information must be validated periodically using the DRR Return which will be made available for completion annually on 30 September for submission no later than 14 November.

Interim updates in respect of a Registered Director’s directorships are not required unless such director’s registration is no longer required, in which case a de-registration notification (Form 236) should be completed.

What is the impact of being registered?

Although directors relying on the Six Directorships Exemption are not required to hold a personal fiduciary licence under the

Fiduciaries Law, such activity now constitutes a “relevant business”² subject to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “**PoC Law**”), with prescribed anti-money laundering and countering the financing of terrorism (“**AML/CFT**”) obligations (see below).

Crucially, changes to the PoC Law in implementing the Director Registration Regime make Registered Directors subject to the full scope of the Commission’s supervisory powers³, including the power to obtain information and documents and carry out site visits and investigations, as well as various enforcement powers (which include powers to suspend registration, issue private reprimands, discretionary financial penalties, public statements and disqualification orders). This expands the scope of the Commission’s monitoring powers and thus enhance the effectiveness of the Bailiwick’s supervisory framework *vis à vis* Registered Directors.

Ahead of the forthcoming MONEYVAL assessment in 2024, the Commission is therefore now able to monitor and verify compliance by Registered Directors with their AML/CFT obligations under the PoC Law (a point noted by MONEYVAL in its 2015 Report, where it issued a recommendation stating that the Bailiwick “should take measures to ensure effective compliance with the AML/CFT requirements in respect of persons acting as a director (for less than six companies) without a personal fiduciary licence but who are subject to the AML/CFT requirements through effective supervision of these directors”).

What are a Registered Director’s AML/CFT obligations?

Prior to the changes, an individual director who relied on the Six Directorship Exemption was subject to the AML/CFT obligations imposed by the PoC Law by virtue of being classified as a “financial services business”⁴. Those AML/CFT obligations included corporate governance, risk assessment, identification and other due diligence measures, monitoring of transactions and activity, the reporting of suspicion, employee screening, training, and record keeping.

Whilst Registered Directors remain subject to the PoC Law following the recent changes, they now do so as a “relevant business”, with specific carve-outs from the AML/CFT requirements of Schedule 3 to the PoC Law. In effect, a bespoke AML/CFT regime has been created for Registered Directors.

Schedule 3 specifically disapplies⁵ four key paragraphs of the AML/CFT regime to Registered Directors, meaning *inter alia* that (i) the need to have in place effective policies, procedures and controls, (ii) the duty to carry out risk assessments, and (iii) the obligations to appoint a money laundering reporting

² Paragraph 6 of Schedule 2 of the PoC Law provides that persons relying on the Six Directorships Exemption are a “relevant business”, which in turn constitutes a “prescribed business” (see section 21 of Schedule 3 of the PoC Law) and in turn a “specified business” (see section 1 of Schedule 3 of the PoC Law) to which Schedule 3 of the PoC Law applies.

³ The Commission only had the power to disapply the six-directorships exemption if it considered an individual not to be “fit and proper” to be a director of a company (which would include instances where the individual has failed to comply with any of the AML/CFT obligations) or where necessary to do so in the public interest and/or as a result of breach of a specified law.

⁴ Paragraph 23 of Part 1 of Schedule 1 to the PoC Law expressly incorporated the Six Directorship Exemption into the definition of “financial services businesses”; Schedule 3 to the Proceeds of Crime Law applies to “financial services businesses” and “prescribed businesses”.

⁵ See paragraph 1(3) of Schedule 3 of the PoC Law

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officer and a money laundering compliance officer, do not apply to Registered Directors.

Registered Directors are required to:

- conduct AML/CFT checks on the UBOs, and their fellow directors, of the companies of which they are a director;
- monitor transactions and other activities of those companies;
- make appropriate disclosures; and
- maintain appropriate records.

In so doing, Registered Directors are also required to have regard to:

- relevant rules and guidance in the Commission's Handbook on Countering Financial Crime and Terrorist Financing;
- any relevant notices issued by the Commission under the PoC Law; and
- the National Risk Assessment published by the Commission from time to time.

Carey Olsen's view

The amendments have been implemented with the specific aim of providing a mechanism for the Commission to monitor and verify compliance of the AML/CFT obligations by directors who avail themselves of the Six Directorship Exemption. This has been achieved using a registration framework, as opposed to a (more onerous) licensing framework. This is a more pragmatic and proportionate manner to address the point raised by MONEYVAL.

At the same time, a simplified and tailored AML/CFT framework has been created to ensure that it is as user-friendly and straightforward as possible.

Where can I get more information?

The Commission's website has a useful [Director Registration Regime](#) page, containing further information and useful links, including a [DRR Return Guidance Document](#).

The Commission is also hosting workshops over the summer for anyone wishing to attend. These workshops are being held at the Commission's offices on Wednesday 16 August and Friday 15 September from 9am to noon. Those wishing to attend are invited to contact the Commission on AMLCFT@gfsc.gg to book a place.



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