

# New registration regime for individuals relying on the 'up to six-directorships exemption'

UPDATE

Update prepared by Helen Wyatt and Sally Rochester (Guernsey)

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This Update provides a summary of recent changes to the supervisory framework for persons relying on the 'up to six-directorships' exemption under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (the **Fiduciaries Law**), notably the introduction of a requirement to register with the Guernsey Financial Services Commission (the **Commission**)

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## Introduction

Acting as a director of a company in or from within the Bailiwick of Guernsey (the **Bailiwick**) is a regulated activity and requires a licence, unless the individual is not acting 'by way of business', ie does not receive any income, fee, emolument or other consideration in money or money's worth<sup>1</sup> for so acting.

The licensing requirement captures directorships of any company, anywhere, ie not just to Bailiwick companies but foreign incorporated companies (as it applies to any person acting as a director in or from within the Bailiwick, regardless of where the company for whom they act is established).

Several exemptions to the licensing requirement are available under the Fiduciaries Law, including where an individual holds up to six directorships which are not otherwise exempt under the Fiduciaries Law (the **six-directorships exemption**).

## Overview

While an individual relying on the six-directorships exemption (an **Exempt Person**) is not required to hold a personal fiduciary licence under the Fiduciaries Law, they are subject to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the **POC Law**) as a 'financial services business'. Accordingly, an Exempt Person must comply with the AML/CFT obligations set out in Schedule 3 to the POC Law and with the Handbook on Countering Financial Crime and Terrorist Financing. In particular, an Exempt Person must undertake due diligence on the beneficial owners of the companies on whose boards they serve.

However, until now an Exempt Person did not come under the full scope of the Commission's (or any other authority's) supervisory powers. In fact, the Commission only had 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.

Furthermore, there has been no system for the Commission to monitor or verify compliance by an Exempt Person with their AML/CFT obligations, as highlighted by MONEYVAL in its 2015 Report (which concern needs to be adequately addressed in time for the forthcoming MONEYVAL assessment in 2024).

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<sup>1</sup> Note that there is no *de minimus* threshold

## New registration regime

With effect from **8 July 2023** (and in the transitional period to **1 October 2023**), Exempt Persons are required to register with the Commission.

Registration costs £75, plus an annual fee of £75, and comprises a two-stage process. Firstly, an Exempt Person must complete a registration form (**DRR Registration Form** ([here](#))) which sets out their personal information and submit this by email. The Exempt Person will then be advised by the Commission (expected to be within seven calendar days of submission of the DRR Registration Form) to complete a return (**DRR Return**) via the Commission's online portal. The DRR Return requires, among other things, details of the Exempt Person's directorships, any disqualifications, solvency and jurisdiction of residence of beneficial owners of the companies for whom they act.

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

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 an Exempt Person's directorship information are not required except where the Exempt Person is no longer required to be registered under the six-directorships exemption, in which case a de-registration notification (Form 236) should be completed.

Guidance to assist those individuals concerned to understand the new registration requirements and their regulatory obligations has been published by the Commission on a new [Director Registration Regime page](#), and the Commission is hosting workshops over the summer for anyone wishing to attend.

## Exemptions

**Registration Exemptions:** Certain categories of individual directors will be exempt from the requirement to register, ie any director who holds a personal fiduciary licence, any director of a company which is administered by a licensed corporate service provider (where the CSP acts as resident agent of the company) and any director who is registered with the Guernsey Registry in the Register of Charities and other Non-Profit Organisations.

**Licensing Exemptions:** Alongside other new categories of exemption from licensing under the Fiduciaries Law, specific exemptions for directors of companies that are connected to registered and authorised collective investment schemes (**CIS**) came into force on **8 July 2023**. Directors of those companies are exempt from the licensing (and therefore the registration) requirement where:

- the connected company is:
  - administered by the designated administrator of the CIS and
  - itself subject to AML/CFT requirements with which the designated administrator is responsible to ensure compliance, or
- the director of the connected company:
  - is an individual and
  - acts as director of, or director of the general partner of, the CIS.

The effect of the broadening of exemptions under the Fiduciaries Law is to reduce the extent of directorship activity which relies upon the six-directorships exemption, and thereby reduce the number of directors who will be required to register with the Commission.

## New supervisory framework

Simultaneously, a new and simplified framework tailored specifically for individuals relying on the six-directorships exemption has come into force and effect from **8 July 2023** which clarifies the scope of the AML/CFT obligations of Exempt Persons.

The new framework disapplies certain common AML/CFT obligations as being not relevant to Exempt Persons, for example the requirement to undertake risk assessments, maintain policies and procedures and

appoint a money laundering reporting officer and a money laundering compliance officer. However Exempt Persons will remain obliged to:

- apply customer due diligence measures to the beneficial owner(s) of the companies in relation to which they act and on their fellow directors
- monitor the activities of those companies
- report suspicions and
- keep customer due diligence, activity and transaction records.

Under the new framework, Exempt Persons will be subject to the Commission's supervisory powers, including the power to obtain information and documents and the power to carry out site visits and investigations. In addition, a variety of enforcement powers are introduced, including power to suspend registration as well as power to issue private reprimands, discretionary financial penalties, public statements and disqualification orders.

## **Conclusion**

For the avoidance of doubt, the new registration regime and supervisory framework **only** impacts those individuals who rely on the six-directorships exemption and will not impact persons relying wholly on the other exemptions from licensing for the activity of acting as a director under the Fiduciaries Law.

With this new registration regime, the Commission has found a sensible solution to closing off the concern raised by MONEYVAL that directors relying on the six-directorships exemption were falling outside of the AML/CFT net, while at the same time expanding the types of directorships which are exempt from the licensing requirements of the Fiduciaries Law.

Moreover, the opportunity has been taken to clarify the CDD burden on directors, taking a proportionate approach to their checking and record-keeping obligations. Given their risk-based approach to supervision, and the minimal risk posed by this group of registered persons, it is unlikely the Commission will be turning the spotlight on registered directors as it goes about exercising its supervisory powers. This might be an area for a future Commission thematic to enable it to gain an understanding of levels of compliance and best practice.

## Contacts

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**Alana Gillies Ridout**  
Partner | Advocate  
Mourant Ozannes (Guernsey) LLP  
+44 1481 731 513  
alana.gilliesridout@mourant.com



**Darren Bacon**  
Partner | Advocate  
Mourant Ozannes (Guernsey) LLP  
+44 1481 731 502  
frances.watson@mourant.com



**Frances Watson**  
Partner | Advocate  
Mourant Ozannes (Guernsey) LLP  
+44 1481 739 331  
frances.watson@mourant.com



**Helen Wyatt**  
Partner | Advocate  
Mourant Ozannes (Guernsey) LLP  
+44 1481 731 408  
helen.wyatt@mourant.com



**John Lewis**  
Partner | Advocate  
Mourant Ozannes (Guernsey) LLP  
+44 1481 731 505  
john.lewis@mourant.com



**James Cousins**  
Counsel | Solicitor (England & Wales) non-practising  
Mourant Ozannes (Guernsey) LLP  
+44 1481 731 505  
john.lewis@mourant.com



**Andrew Grant**  
Senior Associate | Solicitor (England & Wales) non-practising  
Mourant Ozannes (Guernsey) LLP  
+44 1481 739 342  
andrew.grant@mourant.com



**Sally Rochester**  
Director  
Mourant Consulting  
+44 1481 731 508  
sally.rochester@mourant.com



**Manus Carvill**  
Associate Director  
Mourant Consulting  
+44 1481 739 348  
manus.carvill@mourant.com

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