

CONSULTATION: REVISIONS TO THE ANNUAL INFORMATION PROVIDED BY GUERNSEY LEGAL PERSONS

About this consultation

This consultation paper has been issued by the Office of the Registrar. It relates to some proposed changes to the annual information, generally known as the annual validation (AV), which must be provided to the Guernsey Registry by all legal persons incorporated in Guernsey. Following consideration of the responses to this paper, the Registrar intends to submit proposals to the Committee for Economic Development so that it can consider implementing the final version of the changes to the AV by regulation.

The proposed changes to the AV involve the provision of additional information about four matters. These are as follows:

- In the case of an unlicensed individual who is a director of a company (or an equivalent officer of another type a legal person), the grounds on which the individual does not require a licence;
- In the case of resident agent-exempt legal persons, specification of the applicable exemption;
- In the case of legal persons that do not have a licensed resident agent or any other link with a licensed party, the relationship between the resident agent and the legal person;
- In the case of all legal persons, their nature, activities and assets, with variation in what is proposed to be required depending on the nature of the legal person and/or its administration.

The Registrar's presumption is that, except in limited cases, as highlighted in this paper, the additional information proposed will be kept confidential by the Guernsey Registry.

The Registrar welcomes views on each of these matters and on any other issues relevant to the proposals in this consultation.

How to submit comments to the consultation

If you have any comments you wish to submit to this consultation, please submit them to the following email address by 30th June 2020:

Email: enquiries@guernseyregistry.com

CONSULTATION PAPER ON REVISIONS TO THE ANNUAL INFORMATION PROVIDED BY GUERNSEY LEGAL PERSONS

Introduction

1. There is increasing concern globally about the potential abuse of legal persons to facilitate economic crime, money laundering, terrorist financing and financing of the weapons of mass destruction. Transparency of the legal persons that are created in a jurisdiction, and the extent to which the jurisdiction's authorities understand the risks of abuse presented by those legal persons, are therefore increasingly important in evaluations of compliance with international standards in this area. These standards include the Financial Action Task Force (FATF) Recommendations, anti-corruption conventions enacted by the OECD and the UN, and measures relating to tax evasion such as the OECD Global Forum on Exchange of Information for Tax Purposes Standards, covering the Exchange of Information on Request and, more recently, the Automatic Exchange of Financial Account Information (often referred to as the Common Reporting Standard, or CRS), and the EU/OECD Economic Substance Requirements. Guernsey is committed to complying with all of these standards, and to demonstrating that it does so.
2. The legal persons that may be incorporated under Guernsey legislation are companies, limited partnerships with legal personality, foundations and limited liability partnerships. As the holder of centralized details on all these types of legal person, the Guernsey Registry is the most important source of information on legal persons within the jurisdiction. It is essential that the details held by the Guernsey Registry should include all the information about the ownership, control, activities and assets of legal persons that is necessary to give the authorities a full understanding of these issues and any attendant risks. A review has therefore been carried out of the type of information that is currently available to the Guernsey Registry so as to determine whether it is sufficient to achieve this aim and to enable Guernsey to meet all relevant international standards.
3. The finding of the review is that, while the information currently available has been largely sufficient to meet international requirements to date, there are four areas where additional information is required going forward in order for Guernsey to meet international standards as they have evolved. The first concerns directors (or equivalent) who are individuals not licensed as personal fiduciaries by the Guernsey Financial Services Commission (GFSC) or who are directors (or equivalent) in the course of their duties with a full fiduciary licensee. The second concerns information about exemptions from the resident agent

obligation (i.e. the obligation to appoint a resident agent who is responsible for complying with the beneficial ownership regime applicable to legal persons). The third concerns the relationship of unlicensed resident agents with the legal persons by which they were appointed. The fourth concerns information about the nature, activities and assets of legal persons.

4. This additional information is needed to meet developing international expectations on the understanding of risk and a risk based approach to oversight and enforcement measures (including, addressing two of the recommendations in the Guernsey MoneyVal evaluation report published in 2016, which will have prominence in the next MoneyVal evaluation). These expectations have increased significantly in recent years following the inclusion of a requirement to identify, assess and understand money laundering and terrorist financing risk in the FATF Recommendations, and are continuing to increase. The additional information about the nature, activities and assets of legal persons is now also required in order to comply with economic substance requirements.
5. It is therefore intended that the information which legal persons are obliged to provide to the Guernsey Registry should be increased to cover the four areas outlined above. In order to minimise the administrative burden on legal persons in providing this additional information, it is proposed that it should be included as part of the annual validation process, i.e. the existing process whereby every legal person is obliged to provide information to the Registry at a specific point every year. (In the case of foundations this is known as the annual renewal, which should be taken as included in references within this document to the annual validation.)
6. Further details are set out below of the additional information that would be required from companies under the Companies (Guernsey) Law, 2008 (the Companies Law). It is envisaged that virtually all of the additional information would be provided by selecting options from a drop-down menu, with the need to provide freeform information kept to a bare minimum. While the precise form and order of drop-down menus would ultimately be an IT issue, the overriding intention is to make the system very easy to use, with as little overlap or duplication of information as possible between the types of information required.
7. It is also intended that the Guernsey Registry would issue guidance explaining the scope of the new requirements. For the purposes of illustration, draft guidance relating to companies about the proposed information on directors and resident agents is set out as an appendix to this document.
8. Although the additional information as explained below and the draft guidance in the appendix relate to companies (which are by far the most commonly

incorporated form of legal person in Guernsey) the intention is for corresponding additional information to be required from all forms of legal person, modified as necessary to reflect the differences between them. Again, this would be supported by suitably modified guidance.

Additional information about directors who are individuals

9. The details currently required in the AV process about company directors are as follows:
 - name
 - service address
 - whether or not the person is an alternate director.
10. It is proposed that, in addition to the details outlined above, the AV should identify individual directors who do not hold a fiduciary licence, i.e. a licence from the GFSC under the Regulation of Fiduciaries, Administration Business and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (the Regulation of Fiduciaries Law), and the reason for this.
11. As explained in the draft guidance in the appendix, there are two reasons why an individual director is not required to hold a fiduciary licence. The first is where that individual is not acting by way of business (for example, where he or she sits on the board of a charity on a voluntary basis) so is not within the scope of the Regulation of Fiduciaries Law at all. Individuals in this category can conveniently be referred to as unrewarded directors. The second is where an individual is acting by way of business (so is within the scope of the Regulation of Fiduciaries Law) but is covered by a statutory exemption from licensing under section 3 of the Regulation of Fiduciaries Law (or comes within a *de facto* exemption in section 4, which provides that directors who are only acting as such in the course of their duties as an employee or official of an entity that holds a full fiduciary licence from the GFSC come within the scope of that licence). Individuals in this category can conveniently be referred to as exempt directors. The exemptions cover a number of different situations, such as where individuals are directors of companies that they have established to run a locally based business, or where an individual who is providing professional directorship services does so for no more than 6 companies. Under the new requirements, unlicensed directors would have to specify whether they were unrewarded or exempt, and those selecting the exempt director option would then also have to specify which exemption(s) applied to them, including whether or not the individual is *de facto* exempt as he/she is a director only in the course of his/her duties with a full fiduciary licensee.
12. The primary purpose of obtaining information about unrewarded and exempt directors is to enable the authorities to identify persons within the 6 directorship

exemption referred to above, i.e. individuals acting as director of a company by way of business who are exempt from licensing because they do not hold more than 6 directorships. Although such individuals are subject to the regulatory framework for addressing money laundering and terrorist financing (the AML/CFT framework), at present the authorities have no way of identifying them, as no authority currently has a mandate to identify who is exempt or to compel answers from directors on this issue. Concerns were expressed in the MoneyVal report on Guernsey published at the beginning of 2016 as to whether such persons were effectively supervised for compliance with the AML/CFT framework given that their number was not known, and the report contained a recommendation that measures to ensure effective supervision be put in place to remedy this. Currently, it is not possible even to identify directors who are using the 6 directorship exemption.

13. The proposed amendments to the AV requirements will create a legally binding obligation to identify those who are relying on the exemption in question. While this information will not of itself be sufficient fully to address the recommendation in the MoneyVal report, the authorities can use it to find a pragmatic and proportionate way to exercise oversight over the extent to which the individuals concerned are meeting the requirements in the AML/CFT framework.
14. Information about unrewarded and exempt directors will also assist in "policing the perimeter" i.e. identifying unlicensed individuals who are providing director services in circumstances where a licence is in fact required, and in identifying, assessing and understanding risk.

Additional information about companies exempt from appointing resident agents

15. The Companies Law requires companies to appoint a resident agent to obtain information on the beneficial owners of a company and provide that information to the Registrar of Beneficial Ownership. The resident agent must be either an individual who is a locally resident director of the company or a corporate services provider licensed by the GFSC.
16. This obligation is subject to some limited exemptions based on risk. The exemption applies where the company is listed on a recognised stock exchange, is a States of Guernsey trading company or is subject to the oversight of the GFSC (either because it is a company established to provide financial services business or because it is a Guernsey-regulated collective investment scheme). The AV currently requires companies to state whether or not they are exempt from appointing a resident agent, but not the reason. Therefore, in order to ensure that it is clear that the exemption is being used properly, it is proposed that the AV should specify which exemption applies. There appears to be no

disadvantage in making the applicable reason for the exemption used public as the fact of the use of exemption is already published and there is nothing sensitive about the potential reasons; this first of the two additional items requested which the registry intends to place in the public domain.

Additional information about resident agents who are individuals

17. For resident agents that are individuals, the only details currently required under the AV process are their names. It is proposed that, in addition, the AV should identify:
 - an address for service, as there are cases where this is not clear (this address would be the second the two additional items of information requested which the Registry intends to place in the public domain); and
 - whether or not the resident agent holds a fiduciary licence from the GFSC and also whether a GFSC licensee is otherwise involved in the on-going administration or management of the company. There appear to be a number of legal persons where a licensee is the resident agent but not the ongoing administrator/manager and a number which use a licensee as an administrator/manager but not as resident agent. The additional information will allow greater certainty overall as to the role of corporate service providers. This would be the only additional information required about resident agents for companies that are linked to a GFSC licensee. This is because compliance with beneficial ownership obligations by such companies is subject to the oversight of the GFSC, which uses its existing information gathering and enforcement powers for these purposes.
18. For companies without a licensed resident agent or any other on-going link to a GFSC licensee, three further types of additional information would then be required from the resident agent. The first is the length of time for which the person concerned has been associated with the company. The second is whether that person is a beneficial owner of the company. The third is whether that person has served a notice under the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (the Beneficial Ownership Law) to obtain information about the beneficial ownership of the company. Further details are set out in the draft guidance in the appendix.
19. The provision of these three types of additional information will assist the Registrar of Beneficial Ownership to discharge his or her statutory functions, to better understand risk and to exercise oversight functions on the basis of risk. It will also assist the jurisdiction as a whole in assessing the risks posed by companies with resident agents who are not licensed by the GFSC. This is because the more substantial the connections between a resident agent and a company, the less

likely it is that the beneficial ownership information obtained by the resident agent is inaccurate. Similarly, if a resident agent has served a notice to obtain beneficial ownership information, this suggests that there may have been some difficulty in establishing beneficial ownership, which might need to be the subject of follow-up by the Registrar of Beneficial Ownership.

Additional information about activities and assets of companies

20. The AV currently contains 2 requirements for companies to identify the economic activity in which they engage. The first is by reference to a code number. This relates to the Economic Sector Classification Codes (ESCC) used by the States of Guernsey for certain statistical purposes, which include various different categories of activity. The second is in a section on company classification, which requires companies to state which of 6 categories they come into. While the ESCC and the classification section have been used to date as the starting point for understanding the types of activity undertaken by companies, they were not drawn up for the purpose of assessing economic crime risks or with economic substance issues in mind. Therefore, whilst they have been modified for economic substance requirements, they are not sufficient to obtain the information now needed for assessing economic crime risks and enhancements will further assist with assessing risks in relation to the economic substance requirements.
21. For example, neither the ESCC nor the classification section reveal the geographical location in which a company's activities take place or whether those activities involve industries that are seen internationally as vulnerable to corruption or other economic crime. It is also not possible to tell from the ESCC or the classification section whether a company holds assets and, if so, the nature or location of those assets. This means that links with high-risk jurisdictions, activities or assets cannot be properly identified.
22. Therefore, it is proposed that the existing classification section of the AV should be revised to address these issues. The information in the AV relating to the ESCC code would remain unchanged, to enable it to be used as now by the States for other statistical purposes. The new classification section would contain the following categories:
 - Category 1: companies licensed, authorised or registered by the GFSC (excluding protected cell companies (PCCs), incorporated cell companies (ICCs) and incorporated cells (ICs));
 - Category 2: excluding PCCs, ICCS and ICs, secondary GFSC licensees under the Regulation of Fiduciaries Law; these are companies created by lead/primary licensees (i.e. parties in category 1), in order to provide services

as part of their business offering such as corporate directorship or company secretarial services, or to support the activity of the lead licensee;

- Category 3: PCCs, ICCs and ICs;
 - Category 4: charities/non-profit organisations (collectively, NPOs);
 - Category 5: companies not included in any of the previous categories where the resident agent holds a fiduciary licence from the GFSC or where a GFSC licensee is involved in the on-going administration or management of the company. In essence, these companies are what are currently described as financial product companies;
 - Category 6: other than GCRA-regulated companies (see category 7 below), companies not included in any of the previous categories. In essence, these companies are what are currently described as non-regulated companies or “non-reg”;
 - Category 7: GCRA-regulated companies, irrespective of whether or not they might otherwise fall under one of the previous categories.
23. For companies in the first 2 categories, no additional information would be required. This is because the GFSC maintains information on companies in categories 1 and 2. For companies in categories 3 (where a PCC, ICC or IC is not licensed, authorised or registered) to 7, additional information would be required about their purpose and activities, which would vary depending on the category of company involved.
24. The first type of additional information concerns whether there are and the nature of any on-going links/relationships by a company to a GFSC licensee/authorised person (i.e. licensed or authorised for AML/CFT purposes), so only applies to companies in categories 3 to 7. In order to keep this information to the minimum necessary, it would be provided using a cascading approach, in which different options would only come up if the previous option had not been selected. The first option would be the provision of resident agent services, or company administration or management services covered by the Regulation of Fiduciaries Law (see the second bullet point of paragraph 17 above). If one of these does not apply, the second option would be to establish whether there is a link through a Guernsey bank account, the provision of investment services by a GFSC licensee/authorised person or through the provision of accountancy or audit services by a Guernsey accountant or auditor or, if none of these applies, “other” with a requirement to specify the nature of the link. If neither of the two options applies, the final option would be to confirm that there is no ongoing link or business relationship with a GFSC licensee/authorised person. This first type of additional information will establish whether the company and its

beneficial owners have been and remain subject to customer due diligence by a GFSC licensee/authorised person.

25. The second type of additional information applies only to companies for which the resident agent does not hold a fiduciary licence from the GFSC or where a GFSC licensee is not otherwise involved in the on-going administration or management of the company, i.e. all companies in categories 6 and 7 and, potentially, companies in category 4. This is confirmation about whether they have audited accounts (or whether the accounts have been subject to involvement by an accountant to a lesser standard such as an examination) and whether the central management and control of the company is in Guernsey. This second type of additional information will confirm to what extent the company has an internal governance and control infrastructure in Guernsey.
26. The third type of additional information is about the purposes and activities of a company. The AV already contains a box to ascertain the purpose of each company but this is often completed at a very general level, meaning that, while this box will be retained, more specificity is needed. This additional specificity would apply to companies in categories 3 (where the company is not licensed, authorised or registered by the GFSC) and 4 to 7. Here too, a cascading approach would be used. Companies in these categories (other than those in category 4 (NPOs), -for which see paragraph 28 below), would be required to specify which of the following sub-categories they come in:
 - Sub-category 1: Holding companies as defined in section 531 of the Companies Law, i.e. companies established to hold all or a majority of the shares or rights directly or indirectly in subsidiary companies (this definition is used for the purposes of economic substance requirements);
 - Sub-category 2: Investment companies as defined in section 169 of the Income Tax (Guernsey) Law, 1975 (the Income Tax Law), i.e. companies wholly or mainly involved in investment whose income principally derives from those investments. Please note that, while companies which own real property which generates income would come within section 169 of the Income Tax Law, the Registry instead anticipates collection of information on all companies owning real estate under sub-category 3;
 - Sub-category 3: Asset companies, i.e. (a) companies other than investment companies that are established to hold assets that are not generated by any activity carried out by these companies themselves and (b) any companies not covered in (a) that own real property. This would mean, for example, that (a) would include real property such as a domestic dwelling held by the company and used by the beneficial owners as their dwelling, while (b) would include commercial property let to third parties and generating an income; or

- Sub-category 4: Activity companies, i.e. companies that are established to carry out or support some form of commercial activity.

Companies that select sub-categories 2 or 3 would then be asked to specify the locations of any real property held (but not other assets); companies that select sub-category 4 would then be asked to specify the nature and location of their activities. In each case this information would be provided by using a drop-down menu that would allow focus on issues relevant to risk, for example, by reference to whether or not real property is held in London (in light of the perceived links between foreign corporate ownership of real property in London and money laundering) and specific industries such as extraction or logistics that are seen internationally as vulnerable to abuse. Questions about geographical location obviously require a comprehensive list of jurisdictions, but it is likely that the number of options for sub-category 4 would not be more than a dozen. Some responses will then prompt a further cascading question (for example, asking companies that own real property in another jurisdiction to confirm that any registration or notification requirements in that other jurisdiction had been met) but the number of such questions is expected to be small.

27. Companies that select sub-category 1 would be asked to specify the jurisdiction(s) of incorporation of their direct subsidiaries. In relation to each of those subsidiaries they would then be asked about the location of any real property held, and the activities and their location in line with sub-category 4.
28. NPOs would be asked to specify the location of any real property held, and the nature and location of their activities from a series of drop-down boxes.
29. In addition to the foregoing, in relation to all companies in sub-categories 1 to 4 and NPOs, where the resident agent does not hold a fiduciary licence from the GFSC or where a GFSC licensee is not involved in the on-going administration or management of the company (see the second bullet point of paragraph 17), there will be a question as to whether or not the legal person is a settlor, trustee or beneficiary of an existing express trust or occupies an equivalent role in relation to other legal arrangements. There will be cascading questions, including whether or not the legal arrangements are subject to Guernsey law and whether or not beneficial ownership information is held by the legal person. This part of the revised AV will help to address comments in the MoneyVal report in relation to Guernsey's lack of knowledge of the number of legal arrangements not administered by the fiduciary sector and the absence of specific measures to ensure the availability of accurate and complete beneficial ownership information for such legal arrangements.

30. The proposed questions outlined above are directly targeted at risk and will further assist in the necessary compliance checks for economic substance requirements. This has been to reduce the administrative burden on companies, as it will reduce the need for the authorities separately to use their information-gathering powers for these purposes.

Other forms of legal person

31. As indicated above, it is intended that the same additional information would be required in respect of other forms of legal person, adapted as necessary to reflect their different characteristics and the obligations applicable to them. One point should be highlighted in this respect with regard to limited partnerships with legal personality. Under the Limited Partnerships (Guernsey) Law, 1995 (the Limited Partnerships Law) limited partnerships are not required to appoint a resident agent. Instead, regulations made under the Beneficial Ownership Law extend the beneficial ownership obligations applicable to resident agents to a named general partner of a limited partnership with legal personality, subject to an exemption for Guernsey-regulated collective investment schemes. It is therefore proposed that limited partnerships with legal personality should be asked to confirm whether they come within the exemption and, if not, to provide information about the named general partner which corresponds to that about resident agents outlined above.

Amendments to legal framework

32. The revisions to the annual validation will require amendments to the legal framework. This can be dealt with in regulations made under the Companies Law, the Limited Partnerships Law, the Foundations (Guernsey) Law, 2012 and the Limited Liability Partnerships (Guernsey) Law, 2013 respectively.

APPENDIX

DRAFT GUIDANCE UNDER THE COMPANIES LAW

COMPANIES (GUERNSEY) LAW, 2008 ANNUAL VALIDATION GUIDANCE – INFORMATION ON DIRECTORS AND RESIDENT AGENTS

Introduction

Acting as a director without a licence when a licence is required constitutes a criminal offence under section 1 of the Fiduciaries Law. Furthermore, while all licensed directors are obliged to comply with the AML/CFT framework under the Proceeds of Crime Law, there are some circumstances in which this obligation also applies to unlicensed directors. This has a bearing in turn on the resident agent obligations under the Beneficial Ownership Law.

In order to facilitate compliance with the obligations under the Fiduciaries Law, the Proceeds of Crime Law and the Beneficial Ownership Law, and also to assist the jurisdiction in assessing any risks in these areas, details about the status of individual directors and information relating to resident agents are required to be included in the annual validation.

Guidance on completing these aspects of the annual validation is set out below in the form of FAQs. There is also further information on the licensing regime under the Fiduciaries Law and the obligations under the AML/CFT framework on the GFSC website.

FAQ 1: What details about directors are required?

This is set out in the Companies Law. In addition to the particulars required to be entered in the company's register of directors under section 143 of the Companies Law, the annual validation must state whether or not a director who is an individual is licensed (i.e. holds a fiduciary licence from the GFSC). Where that director is licensed, no further details about him or her are required because the compliance of that director with all applicable obligations under the legal framework will be subject to the oversight of the GFSC.

Where an individual director is not licensed, the annual validation must state whether this is because that person is an unrewarded director or because he or she is an exempt director.

The difference between an unrewarded director and an exempt director is that unrewarded directors are those who are not acting by way of business (so are not within the scope of the Fiduciaries Law at all), whereas exempt directors are those who are acting by way of business (so are within the scope of the Fiduciaries Law) but are covered by a statutory exemption from licensing under section 3 of the Fiduciaries Law. In this latter situation, the applicable exemptions must also be specified in the annual validation.

Therefore, in order to complete this part of the annual validation, the following steps must be followed in the case of each director who is an individual:

Step 1: Establish whether that director holds a fiduciary licence (see FAQ 2). If the answer is yes, no further information is required. If the answer is no, go on to Step 2.

Step 2: Establish whether that director is rewarded (see FAQ 3). If the answer is no, no further information is required. If the answer is yes, go on to Step 3.

Step 3: Establish which exemption(s) under section 3 of the Fiduciaries Law applies to that director, or whether section 4 of the Fiduciaries Law applies¹ (see FAQ 4).

FAQ 2: What is meant by holding a fiduciary licence?

For individuals, this means holding a personal fiduciary licence from the GFSC. Whether or not a director holds a fiduciary licence is public information that can be easily established by checking the list of fiduciary licensees on the GFSC website, available here:

<https://www.gfsc.gg/industry-sectors/fiduciary/regulated-entities>

FAQ 3: What is meant by being rewarded?

This means acting as a director by way of business. The term "by way of business" is defined at section 58(3) of the Fiduciaries Law, which specifies that a person carries out an activity by way of business if he or she receives any income, fee, emolument or other consideration in money or money's worth for doing so.

It is important to note that the language of section 58(3) is extremely wide and encompasses anything with a monetary value. This means that anything which goes beyond receiving the type of small gifts that are typically given to thank people for

¹ It is assumed in step 3 that an unlicensed director who is rewarded must be covered by an exemption in section 3 of the Fiduciaries Law or comes within section 4, because otherwise that person would require a licence from the GFSC. Acting without a licence when one is required is a criminal offence, and any person who believes that this may be occurring should inform the authorities immediately.

taking on an official responsibility without payment (for example, a bunch of flowers or a bottle of wine) will be regarded as acting by way of business.

Therefore, the circumstances in which a person is not acting as a director by way of business are extremely limited. This is only likely to arise in practice where parties are willing to provide free directorship services for a company because it is involved in charitable work or community activities which they support, or because they have a family or social connection to the company.

FAQ 4: What is meant by being exempt?

This means that a director is covered by one or more of the exemptions at section 3 (1) of the Fiduciaries Law, or is *de facto* exempt under section 4. Section 4 provides that directors who are acting as such solely in the course of their duties as an employee or official of an entity that holds a full fiduciary licence from the GFSC are covered by that licence.

The exemptions applicable to acting as a director under section 3(1) broadly speaking cover the following parties:

- Any party that acts as a director of a company (provided that no other services consisting of a regulated activity such as nominee shareholder is provided by the director) with an established place of business in the Bailiwick (section 3(1)(b));
- Any party that acts as a director of a company listed on a recognized stock exchange (section 3(1)(c));
- Any party that acts as a director of a company in the majority ownership of that director or his/ her close family (section 3(1)(d));
- Any party that acts as a director of a company supervised by the GFSC (section 3(1)(e));
- Any party that acts as a director of a company which is a subsidiary of a company within the bullet points above (section 3(1)(f));
- An individual that acts as a director of up to 6 companies which do not fall into any of the categories of companies cited in the above bullet points, provided that the GFSC has not disapproved this exemption to that individual (section 3(1)(g)).

There may be an overlap between some of these categories. For example, a person who is the director of a company with an established place of business in the Bailiwick

(for example, a Guernsey-based company providing IT services to local or international clients) will come within the first exemption, but will also come within the third exemption if the company is majority owned by that person or by his or her close relatives.

Similarly, while the last exemption is numerical, some of the directorships held by a person within that exemption may also be covered by one of the other exemptions because of the nature of that directorship. There is detailed guidance on how to calculate the 6 directorships for the purposes of this last exemption on the GFSC website, available here:

<https://www.gfsc.gg/industry-sectors/fiduciary/guidance/acting-director>

FAQ 5: What information on resident agents is required?

Any company that is covered by Part XXIX of the Companies Law must have a resident agent, who is obliged to maintain accurate and up to date information on beneficial ownership. Part XXIX applies to all companies except companies listed on stock exchanges recognized by the Registrar of Companies, companies that are Guernsey-regulated open-ended or closed-ended investment schemes, companies that are supervised by the GFSC and States of Guernsey trading companies. The Companies Law specifies that the resident agent must be a corporate services provider (i.e. a person holding a full fiduciary licence from the GFSC) or an individual locally resident director.

In addition to the particulars required to be entered in the company's record of resident agent under section 485 of the Companies Law, the annual validation must state, in the case of a resident agent who is not a corporate services provider, whether or not he or she holds a fiduciary licence (see FAQ 2) or whether a GFSC-licensed corporate services provider is otherwise linked to the company on an ongoing basis, for example, by managing or administering it, or if the resident agent or another director is an employee or official of a GFSC-licensed corporate services provider. Where an individual resident agent holds a fiduciary licence or there is some other on-going link to a GFSC-licensed corporate services provider, no further details about the resident agent are required because his or her compliance with all applicable obligations under the legal framework will be subject to the oversight of the GFSC.

Where an individual resident agent does not hold a fiduciary licence and there is no on-going link to a GFSC-licensed corporate services provider, the annual validation must state three things. The first is the length of time for which the resident agent has been a director of the company or otherwise associated with it (rounded up or down to the nearest year). The second is whether or not the resident agent is a beneficial owner of the company. The third is whether the resident agent has ever served a section 9 notice, i.e. a notice under section 9 of the Beneficial Ownership Law to obtain information about beneficial ownership (see FAQ 6).

FAQ 6: What are section 9 notices?

There are two types of section 9 notice. The first type of section 9 notice is a notice requiring a person to confirm whether or not he or she is a beneficial owner of the

company, to confirm any required particulars that are included in the notice, and to supply any required particulars that are missing. Required particulars for these purposes are the details about beneficial owners listed at section 10(3) of the Beneficial Ownership Law. It is important to be aware that service of this type of section 9 notice is compulsory. In other words, a resident agent must serve this notice on a person if the resident agent has reasonable grounds to believe that the person is or may be a beneficial owner of the company. However, in order to avoid burdening the resident agent with unnecessary formalities, the obligation to serve a section 9 notice does not apply if the resident agent has already been informed that the person is a beneficial owner of the company on the basis of information provided by that person or with his or her knowledge.

The second type of section 9 notice is a notice served on third parties by a resident agent in order to obtain information about the identity of any beneficial owners of the company. This may be served on a person if the resident agent knows or has reasonable grounds to believe that the person knows the identity of any beneficial owner of the company, or can identify someone else who is likely to have that knowledge. Service of this type of section 9 notice is not compulsory, as its purpose is simply to assist a resident agent in meeting his or her obligations to maintain accurate and up to date information on the beneficial owners of the company.

FAQ 7: When does an unlicensed director have to comply with the AML/CFT framework?

The types of financial services businesses that are subject to the AML/CFT framework are listed in Schedule 1 of the Proceeds of Crime Law. Under paragraph 23 of Schedule 1, this includes activity under the Fiduciaries Law for which a licence is required. Therefore, the AML/CFT framework applies to licensed directors only, not to directors who are exempt from the need for a licence under section 3 of the Fiduciaries Law (other than acting as a director of a company which has been declared to be a registered collective investment scheme under section 8 of the Protection of Investors (Bailiwick of Guernsey) law, 1987 or as a director of a subsidiary of such a scheme). However, this is subject to one important caveat. Paragraph 23 also expressly includes activity carried on by way of business that comes within section 3(1)(g) of the Fiduciaries Law. This means that the AML/CFT framework does apply to individuals acting as directors for up to 6 companies by way of business, as outlined above.

Consequently, any individual who is providing directorship services to a company, and who would require a licence to do so but for the 6 directorship exemption, must

apply the customer due diligence measures and the other requirements of the AML/CFT framework in respect of that company. These requirements apply to such individuals in exactly the same way as they apply to licensed directors. Any individual in this category who requires further information about the scope and application of the AML/CFT framework will find detailed guidance on the GFSC website.

Glossary

AML/CFT	Anti-money laundering/countering the financing of terrorism
Beneficial Ownership Law	Beneficial Ownership of Legal Persons (Guernsey) Law, 2017
Companies Law	Companies (Guernsey) Law, 2008
Fiduciaries Law	Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000
GFSC	Guernsey Financial Services Commission
Proceeds of Crime Law	Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999