

**THE FIDUCIARY RULES AND GUIDANCE, 2021:**  
***ACTING WITH INTEGRITY***

*CONSOLIDATED VERSION*

The Fiduciary Rules, made in accordance with The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 (“the Law”), are set out in this document. This version incorporates amendments made, as set out in the footnote<sup>1</sup>.

Guidance, provided by the Guernsey Financial Services Commission (“the Commission”) is set out in the blue boxes.

September 2022

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<sup>1</sup> Amending instruments incorporated: The Fiduciary (Amendment) Rules, 2022; The Fiduciary (Amendment)(No. 2) Rules, 2022.

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## **PART 1 - INTRODUCTION**

### **1.1 Application**

- (1) These Rules replace -
  - (a) The Fiduciary Rules 2020<sup>2</sup>; and
  - (b) The Regulation of Fiduciaries (Annual Return) Regulation, 2017<sup>3</sup>.
- (2) The Commission may in its absolute discretion, by written notice to a licensed fiduciary, exclude or modify the application of any provision of these Rules.

**Guidance Note:** This document takes a two-level approach –

- the Rules set out the standards to be met by the licensed fiduciary; and
- guidance notes present suggested ways of showing compliance with the Rules.

Licensed fiduciaries may adopt alternative measures to those set out in the guidance so long as it is possible to demonstrate that such measures achieve compliance.

The text contained in shaded boxes contains guidance from the Commission and does not form part of the Rules.

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<sup>2</sup> No. 12 of 2020.

<sup>3</sup> No. 27 of 2017.

## **PART 1A – PRIMARY AND SECONDARY FIDUCIARY LICENCES**

### **1A.1 Conversion of primary fiduciary licences to secondary fiduciary licences and vice versa**

- (1) A primary fiduciary licence may be converted to a secondary fiduciary licence either –
  - (a) on the application, to the Commission, by the licensee; or
  - (b) by the Commission, with the agreement of the licensee.
- (2) Applications for conversion must include confirmation that the requirements of section 4 of the Law are met.
- (3) Where a secondary fiduciary licensee wishes to become a primary fiduciary licensee a new licence application must be submitted to the Commission.

### **1A.2 Requirements of secondary fiduciary licensees**

- (1) Each secondary fiduciary licensee must have been designated as being a secondary fiduciary licensee to a single primary fiduciary licensee, and the Commission must be notified of this designation-
  - (a) on application for a new secondary fiduciary licence;
  - (b) on application for the conversion of an existing primary fiduciary licence to a secondary fiduciary licence; and
  - (c) immediately where the designated primary fiduciary licensee changes.
- (2) Secondary fiduciary licensees must not actively trade.

**Guidance Note:**

**Key characteristics of the new categories can be summarised as follows:**

	<b>Primary fiduciary licence</b>	<b>Secondary fiduciary licence</b>	<b>Reference</b>
<b>Corporate director</b>	Cannot have a corporate director on the board.	May have (and may be) a corporate director.	Section 4(2)(b) and 4(3)(b) of the Law.
<b>Ownership</b>	No specific requirements nor prohibition regarding ownership in the Law.	May only be granted to an entity which is a subsidiary of, or wholly beneficially owned by, a primary fiduciary licensee or the holding company of a primary fiduciary licensee.	Section 4(3)(a) of the Law.
<b>“Actively trade”</b>	No prohibition and therefore can actively trade.	Cannot actively trade.	Rule 1A.2.
<b>Others</b>	Common staff, procedures and clients.		The Financial Commission (Fees) Regulations continue to apply.

**“Actively trade”**

It is the Commission’s view that a secondary fiduciary licensee’s role is to provide certain, specific, regulated fiduciary services to the clients of its primary fiduciary licensee only. A secondary fiduciary licensee is not expected to trade independently from its primary fiduciary licensee in respect of regulated fiduciary services, e.g. by providing fiduciary services to clients who are unrelated to the clients of the primary fiduciary licensee.

While a secondary fiduciary licensee must not actively trade, this does not preclude a secondary fiduciary licensee from being deemed to carry on its activities by way of business, as defined by section 59(3) of the Law. A secondary fiduciary licensee would be deemed to carry on its activities by way of business if any income, fee, emolument or other consideration in money or money’s worth is received by the relevant primary fiduciary licensee in connection with the activities of the secondary fiduciary licensee. For the avoidance of doubt, a secondary fiduciary licensee is not deemed to actively trade if it receives (i) reimbursement of its expenses or (ii) sums to make it whole in respect of any existing liabilities it may have.

## **PART 2 – CORPORATE GOVERNANCE AND EFFECTIVE MANAGEMENT**

### **2.1 Corporate Governance**

#### **2.1.1 Application**

- (1) Rule 2.1 applies to primary and secondary fiduciary licensees.

#### **2.1.2 Board and Senior Management**

- (1) The Board and senior management, of a licensed fiduciary, must take all reasonable steps to ensure that all employees of the licensed fiduciary act so as to avoid material damage either to -

- (a) the licensee's reputation;
- (b) the licensee's financial position; and
- (c) the reputation of the Bailiwick as an international finance centre.

- (2) The Board of a licensed fiduciary –

- (a) must ensure that the licenced fiduciary –
  - (i) has in place effective and appropriate policies, procedures and controls to ensure compliance with these Rules and all other relevant legislation;
  - (ii) recruits, trains, and supervises relevant personnel to ensure compliance with these Rules and all other relevant legislation; and
  - (iii) operates robust arrangements for meeting the requirements of these Rules and all other relevant legislation;
- (b) retains responsibility for any functions it outsources at all times;

- (c) must evaluate its compliance with the Code of Corporate Governance<sup>4</sup>; and
- (d) [must appoint such number of Bailiwick-based senior executives as is commensurate with the nature, size and complexity of the licensed fiduciary's activities in the Bailiwick, and the prudent conduct of its business.]<sup>5</sup>

## **2.2 Competence and effective management**

- (1) A licensed fiduciary must comply with the Rules and, where applicable –
  - (a) understand and discharge fiduciary duties or other duties arising under the trust deeds and the legislation applicable to each trust; and
  - (b) understand and comply with its contractual and other legal obligations arising under any relevant client contracts or any relevant legislation.
  
- (2) A licensed fiduciary which holds a primary or a secondary fiduciary licence must –
  - (a) ensure that the responsibilities and authority of relevant personnel are clear and appropriate to his or her qualifications and experience;
  - (b) ensure that any person for whom it arranges to act as a director of a client company, a foundation official or a trustee understands their duties and is fit and proper to do so;
  - (c) record and monitor compliance with these Rules and all other relevant legislation;
  - (d) keep a breaches register which logs all instances of non-compliance with these Rules; and
  - (e) satisfy the minimum criteria for licensing.

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<sup>4</sup> Instrument made on 30 September 2011.

<sup>5</sup> Subrule 2.1.2 (2)(d) – inserted by The Fiduciary (Amendment) Rules, 2022.

**Guidance Note:**

The personnel, and procedures followed, will be assessed by the Commission, with reference to the nature and scale of the business. The Commission will in each case consider the licensed fiduciary's resources and systems as a whole but, for example, may want to see evidence of -

- for a Trust Service Provider ("TSP"), an understanding on the part of the personnel of both the TSPs' duties to clients and the extent to which the TSP must exercise independent judgement in performing its functions;
- for a Corporate Service Provider ("CSP"), an understanding on the part of the personnel of the memorandum and articles of association or incorporation (or equivalent documents) of client companies and of both the CSPs' duties to client companies and the extent to which the CSP must exercise independent judgement in performing its functions;
- for a Pension Service Provider ("PSP"), an understanding on the part of the personnel of the governing documentation of client pension schemes and of both the PSPs' duties to clients and the extent to which the PSP must exercise independent judgement in performing its functions; and
- for a Foundation Service Provider ("FSP"), an understanding on the part of the personnel of the constitutional documentation of client foundations and of both the FSPs' duties to foundations and the extent to which the FSP must exercise independent judgement in performing its functions.

Where a licensed fiduciary, whether a personal fiduciary licensee, a primary fiduciary licensee or a secondary fiduciary licensee, acts as director of a company, compliance with rule 2.2(1) may involve obtaining necessary advice, for example, on the law of the jurisdiction in which the company is incorporated or carries on its activities.

**Guidance Note:**

**Fit and Proper** – is as defined in Schedule 1 of the Law and the “Fit and Proper Guidance” issued by the Commission (5<sup>th</sup> October 2018).

**4-eyes Criterion**

Paragraph 3 of Schedule 1 of the Law requires that the business of a primary or a secondary fiduciary licensee is directed by at least two individuals (the “4-eyes criterion”). In addition to (1) and (2) of paragraph 3, it is expected that the individuals:

- will be either executive directors or persons granted powers by, and reporting immediately to, the Board. This is to ensure that at least two minds are applied both to the formulation and the implementation of the policy of the institution. The Commission would not regard it as sufficient for the second person to make some, albeit significant, decisions relating only to a few aspects of the business. Both must demonstrate ability to influence strategy and day-to-day policies and their implementation, and both must actually do so in practice. Both persons’ judgements must be engaged in order that major errors leading to difficulties for the business are less likely to occur;
- have sufficient understanding and time available to discharge their duties effectively, taking into account the number and importance of their other commitments; and
- are of sufficient experience and knowledge of the business and the necessary personal qualities to detect and resist any imprudence, dishonesty or other irregularities by the other person.

### 2.2.1 Records of the licensed fiduciary's own business

- (1) A licensed fiduciary, in relation to its own business, must ensure that all appropriate records are kept up to date, complete, and accurate.

#### **Guidance Note:**

These records may include, but are not limited to, its –

- (a) business transactions;
- (b) financial position;
- (c) internal organisation;
- (d) risk management systems; and
- (e) Board and management minutes.

### 2.3 Conflict of interest

- (1) Subject to the terms of any constitutional documents and applicable laws, a licensed fiduciary must –
- (a) be impartial;
  - (b) not unfairly place its interests above those of its clients; and
  - (c) ensure fair treatment between clients.
- (2) A licensed fiduciary must –
- (a) establish, implement, and maintain an effective written conflicts of interest policy which is appropriate to the nature, scale, and complexity of the business;
  - (b) ensure that adequate procedures are implemented to either avoid any conflict of interest arising or, where conflicts do arise, manage or minimise them;

- (c) keep records of any conflicts of interest and how they are managed;
- (d) without prejudice to these Rules, the AML Handbook<sup>6</sup>, the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003<sup>7</sup> and any other related legislation, not solicit, receive, or accept bribes or gifts, inducements, rewards or advantage that are likely to conflict with the licensees' duty to any client;
- (e) not profit from holding Fiduciary Client Money.

**Guidance Note:**

1) Licensed fiduciaries are prohibited from receiving and retaining any commission or monetary or non-monetary benefits from the holding of Fiduciary Client Money. Benefits can be received but they must be passed on to clients, in a similar manner as to how fees/charges incurred on client bank accounts are passed on to clients.

2) For the avoidance of doubt, the following does not amount to profiting:

- covering the costs such as time charged fee or software licence/ programme to run or manage pooled accounts;
- in the case of a pooled account, *de minimis* interest retained by the licensed fiduciary providing that the licensed fiduciary has considered and can evidence that such interest could not be cost-effectively distributed to the benefit of clients.

## 2.4 Account rules

### 2.4.1 Accounting records and accounting period of a licensed fiduciary

- (1) The accounting records of a licensed fiduciary must –
  - (a) show and explain transactions;
  - (b) enable financial statements to be prepared; and

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<sup>6</sup> Handbook on Countering Financial Crime and Terrorist Financing, Guernsey Financial Services Commission.

<sup>7</sup> Order in Council No.1 of 2004.

- (c) present, with reasonable accuracy at any time, all assets, liabilities, income, and expenditure.
- (2) The accounting period, of a licensed fiduciary, must be set and –
  - (a) must not exceed 12 months, and
  - (b) must not be altered, without prior written permission from the Commission.

## 2.4.2 Reporting to the Commission

### *Personal Fiduciary Licensees*

- (1) The Commission must be provided annually as part of the Annual Return, with particulars of the licensee's financial position, with regards to regulated activities.

#### **Guidance Note:**

The particulars referred to in rule 2.4.2(1) do not have to take the form of a financial statement. A statement of the income from, and any liabilities relating to, the personal fiduciary licensee's regulated activities for the accounting period is sufficient.

### *Primary and Secondary Fiduciary Licensees*

- (2) Licensees must appoint an auditor and ensure that the appointment is maintained at all times.
- (3) The Commission must be provided with financial statements in relation to each accounting period and within four months of the end of that accounting period unless the Licensee is also licensed under another Regulatory Law and receives written agreement from the Commission that reporting requirements under that Regulatory Law take precedence.

(4) Financial statements –

- (a) may be provided as consolidated group financial statements where the group comprises more than one licensed fiduciary;
  - (b) must present a true and fair view of the financial position at the end of that accounting period;
  - (c) must present a true and fair view of any profit and loss during that accounting period;
  - (d) must be prepared in accordance with United Kingdom accounting standards<sup>8</sup>, United States accounting standards<sup>9</sup> or International Financial Reporting Standards<sup>10</sup>; and
  - (e) must be accompanied by an auditor's report prepared in accordance with the International Standards on Auditing issued by the Financial Reporting Council or the International Standards on Auditing issued by the International Auditing and Assurance Standards Board.
- (5) If, during the accounting period, the licensee has received any reports prepared by an internal or external auditor, an accountant or a consultant which address the breakdown of, or any material weakness in, internal control procedures then these reports must be provided with the financial statements.
- (6) Management letters received from external auditors must be submitted together with the financial statements.

### **2.4.3 Electronic filing**

- (1) Returns filed, with the Commission, under rule 2.4 must be submitted in such electronic format as the Commission makes available.

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<sup>8</sup> As issued by the Financial Reporting Council.

<sup>9</sup> As issued by the Financial Accounting Standards Board.

<sup>10</sup> As issued by the International Accounting Standards Board.

## **2.4A Annual Return**

- (1) The Annual Return must be submitted in such electronic format as the Commission makes available.
- (2) A person who held a primary fiduciary licence at the end of the Annual Return Period must make an Annual Return, to the Commission, of their regulated activity and of the regulated activity for each of the secondary fiduciary licensees for which it is the designated primary fiduciary licensee.
- (3) A person who held a personal fiduciary licence at the end of the Annual Return Period, must make an Annual Return, to the Commission, of their regulated activity.
- (4) An Annual Return must be made, to the Commission, within two calendar months of the end of the Annual Returns Period to which it relates.

## **2.5 Fiduciary Client Money**

### **2.5.1 Application and definition**

- (1) Rule 2.5 applies to licensed fiduciaries which hold or have control of Fiduciary Client Money.
- (2) “Fiduciary Client Money” means money which is –
  - (a) held or received on behalf of a client; or
  - (b) controlled by a licensed fiduciaryin accordance with the responsibilities the licensed fiduciary has accepted in the course of carrying on a regulated activity under the Law.
- (3) Where there is more than one licensed fiduciary controlling Fiduciary Client Money, a licensed fiduciary may, under written agreement, rely on another licensed fiduciary to take action in order to meet requirements under certain rules providing they are satisfied that the Rules have been complied with.

**Guidance Note:**

The Law defines "clients", in relation to any person, to mean –

- (a) persons who have entered into or may enter into agreements for the provision of services by that person when carrying on by way of business any regulated activities, or
- (b) persons who have received or may reasonably expect to receive the benefit of services provided or arranged or to be provided or arranged by that person when carrying on by way of business any regulated activities.

It should be noted that the definition of “clients” in the Law may differ from the common understanding of the term used by some TSPs and may include both settlors and beneficiaries.

**2.5.2 Policies, procedures and controls**

- (1) A licensed fiduciary must have in place policies, procedures, and controls, appropriate to the nature and scale of its operations, which prevent the inappropriate use of Fiduciary Client Money.

**2.5.3 Disclosure**

- (1) A licensed fiduciary must, where relevant, inform any person with whom they propose to enter into a contract or agreement in respect of the provision of regulated activities of the terms upon which Fiduciary Client Money is held.

**2.5.4 Operation of Bank Accounts**

- (1) A licensed fiduciary must ensure that Fiduciary Client Money is held –
  - (a) in a Client Bank Account or a Client Entity Bank Account;
  - (b) separately from its own money; and
  - (c) separately from another client’s money.

- (2) Rule 2.5.4(1)(c) does not apply to –
  - (a) multi-member pension schemes, including occupational pension schemes; and
  - (b) pooled accounts where specific requirements under rule 2.5.5 apply.
- (3) The title of the Client Bank Account must sufficiently distinguish the account from any other account containing money that belongs to the licensed fiduciary.
- (4) Prior to holding or receiving any Fiduciary Client Money into a Client Bank Account, a licensed fiduciary must receive a written acknowledgement from the bank that –
  - (a) all money standing to the credit of the account is held by the licensee as a trustee; and
  - (b) the bank is not entitled to combine the account with any other account or exercise any right of set-off or counterclaim against money in the account in respect of a debt or other obligation owed to it by the licensee.

### **2.5.5 Pooled Accounts**

- (1) A pooled account can be used to hold Fiduciary Client Money for one of the following reasons –
  - (a) operational efficacy;
  - (b) cash management or treasury services; or
  - (c) due to an exceptional circumstance where the licensed fiduciary is unable to segregate the money of one client from that of other clients.
- (2) For the purposes of rule 2.5.5(1)(c) the licensed fiduciary must inform the Commission of the circumstances preventing the money from being segregated.
- (3) When a pooled account is used to hold Fiduciary Client Money, the licensed fiduciary must ensure that this is clearly and specifically agreed with the client.

- (4) The licensed fiduciary must be able to promptly identify the individual balance due to each client from a pooled account.

**Guidance Note:**

Examples of how a pooled account may be used –

- to receive client funds immediately prior to opening a Client Bank Account or a Client Entity Bank Account;
- for operational efficacy such as paying registry fees on behalf of a number of client companies, taking fees or making a payment by cheque where the Client Bank Account or Client Entity Bank Account does not have a cheque book or making limited or one-off distributions or onward investment at the end of a client relationship.

#### **2.5.6 Withdrawal of Fiduciary Client Money**

- (1) A licensed fiduciary must have procedures in place for ensuring that all withdrawals from a Client Bank Account or a Client Entity Bank Account are –
- (a) subject to the appropriate level of authorisation and, at a minimum, dual authorisation; and
  - (b) in accordance with any constitutional documents.
- (2) A licensed fiduciary must not withdraw money from a Client Bank Account or a Client Entity Bank Account unless –
- (a) it is not Fiduciary Client Money;
  - (b) it is properly payable by or on behalf of a client, or in respect of a client; or
  - (c) it is properly transferred to another Client Bank Account or a Client Entity Bank Account or into a bank account in the client's own name.

- (3) A licensed fiduciary must not withdraw Fiduciary Client Money to pay for outstanding fees unless permitted under the trust deed, the terms of business, or with the agreement of the relevant client.

**Guidance Note:**

The relevant client referred to in rule 2.5.6(3) may be the settlor or the person whom the licensed fiduciary entered into a contract with, as the case may be.

### **2.5.7 Overdrawn**

- (1) As far as possible a licensed fiduciary must ensure that –
  - (a) a pooled Client Bank Account does not become overdrawn;
  - (b) a Client Bank Account, that is not pooled, does not become inadvertently overdrawn.

**Guidance Note:**

In the event that a Client Bank Account becomes overdrawn in breach of rule 2.5.7 (1)(a) or (b), the licensed fiduciary should seek to rectify the position as quickly as possible. The licensed fiduciary may use its own money in order to restore, in whole or in part, any money paid out of the Client Bank Account in contravention of the Rules or to restore the Client Bank Account out of an overdrawn position.

### **2.5.8 Reconciliation**

- (1) A licensed fiduciary must ensure that a reconciliation is carried out between its records of Fiduciary Client Money and records or statements from a bank in which that Fiduciary Client Money is kept.
- (2) A licensed fiduciary must determine the appropriate frequency of reconciliation and perform the reconciliation promptly.

- (3) A licensed fiduciary must maintain accurate and up to date records in relation to Fiduciary Client Money which enable it to promptly identify the balance due to each client and which are in a form that allows timely reconciliation.
- (4) When a discrepancy is identified, during reconciliation, a licensed fiduciary must investigate the reason for the discrepancy and take all reasonable steps to resolve it without delay.

**Guidance Note:**

In determining the appropriate frequency of reconciliation of a Client Bank Account or a Client Entity Bank Account, a licensed fiduciary should consider factors, including -

- volume, frequency and value of transactions;
- the nature and complexity of the business to which the transactions relate; and
- risks associated with the transactions.

Regular reconciliations are an important control and can minimise losses through early detection of problems.

The Commission expects, as a minimum and subject to consideration of the above factors, that the reconciliation should be carried out -

- (i) for a Client Bank Account
  - at least on a monthly basis for a pooled account;
  - at least annually for a non-pooled account, or more regularly on the basis of the volume and frequency of transaction;
- (ii) for a Client Entity Bank Account, at a minimum annually, or more regularly on the basis of the volume and frequency of transactions.

'Discrepancy' refers to the situation where records of Fiduciary Client Money, kept by the licensed fiduciary, do not match the statement received from the bank in which it is held.

### **2.5.9 Review of controls over Fiduciary Client Money**

- (1) A licensed fiduciary must implement an annual independent review of the controls over Fiduciary Client Money. The review must –

(a) verify the effectiveness of the controls with particular regard to the prevention of –

- (i) loss;
- (ii) misuse; and
- (iii) misappropriation

of Fiduciary Client Money; and

(b) be performed by an appropriate, independent person who may be an internal or external party.

(2) The review under rule 2.5.9(1) does not include Client Entity Bank Accounts.

**Guidance Note:**

Where an internal party performs such a review they should be operationally independent from the individuals or functions responsible for the functioning of the control processes.

## 2.6 Record keeping

### 2.6.1 Application

(1) Rule 2.6.2(1) does not apply to Pension Service Providers (“PSPs”). When carrying out pension business a PSP should refer to rule 2.6 of The Pension Scheme and Gratuity Scheme Rules, 2021 for record keeping requirements.

### 2.6.2 Adequate Records

(1) A licensed fiduciary must ensure that adequate records relating to regulated activities are kept and preserved. Such records should include, but are not limited to, the following –

(a) in the case of a Trust Service Provider (“TSP”); records of all trusts including, but not limited to, details of the trust –

- (i) property;
- (ii) material communications with clients, client companies and others;
- (iii) accounting records;
- (iv) tax records; and
- (v) minutes of meetings held;

(b) in the case of a Corporate Service Provider (“CSP”); records of all client corporate entities including, but not limited to, details of their –

- (i) managers, as defined in the Law;
- (ii) jurisdictions of incorporation;
- (iii) accounting records;
- (iv) company registers;
- (v) material communications with clients, client companies and others; and
- (vi) proceedings of company meetings;

(c) in the case of a Foundation Service Provider (“FSP”); records of all foundations including, but not limited to, details of –

- (i) foundation officials;
- (ii) places of registration;
- (iii) accounting records;
- (iv) registers;
- (v) material communications with clients and others; and

(vi) proceedings at council meetings

so far as appropriate for the licensed fiduciary's functions.

(2) A licensed fiduciary must ensure that it has appropriate record keeping arrangements in accordance with its functions and in compliance with these Rules and any other applicable legislation. These arrangements must –

(a) deliver effective information and document management ensuring that all relevant records are –

(i) as up-to-date as is reasonable;

(ii) filed and arranged so as to permit prompt access to any particular record;

(iii) in a form capable of prompt reproduction into English; and

(iv) capable of being checked or audited so as to demonstrate compliance with any applicable laws, regulations, and rules.

**Guidance Note:**

Rule 2.6.2(2)(a)(iii) requires that records held by a licensed fiduciary, relevant to the performance of its regulated activities, are capable of reproduction into English. It is not expected that all records held by a licensed fiduciary must be translated into English.

**Personal Fiduciary Licensee**

When carrying out regulated activities where there is another licensed fiduciary carrying out a similar role, a licensed fiduciary holding a personal licence may, upon written agreement, rely on another licensed fiduciary to keep and preserve the records as required under this rule providing that they are satisfied that the Rules are complied with.

Although a Personal Fiduciary Licensee may rely on another licensed fiduciary regarding record keeping it is, ultimately, the responsibility of the Personal Fiduciary Licensee to ensure compliance with this rule.

### **2.6.3 Data security**

- (1) A licensed fiduciary must maintain adequate policies and procedures for the maintenance, security, privacy, and preservation of all documents and records belonging to the licensed fiduciary and its clients so that they are reasonably safeguarded against loss, unauthorised access, alteration, or destruction.
- (2) Any policies and procedures must conform with the Data Protection (Bailiwick of Guernsey) Law, 2017<sup>11</sup>.

### **2.6.4 Retention of records**

- (1) A licensed fiduciary must keep and preserve for a minimum of six years, or for a period required under an applicable law, whichever is greater, –
  - (a) records of its own business prepared in accordance with these Rules; and
  - (b) any documents relating to clients which were prepared in compliance with these Rules.
- (2) A licensed fiduciary which is ceasing to carry out regulated activities must have appropriate arrangements to retain all documents and records, prepared in accordance with these Rules, for a minimum period of six years following the surrender of the fiduciary licence. The Commission may extend this period by serving written notice prior to the end of the initial six year period.
- (3) Where a licensed fiduciary is aware of any matter which is subject to investigatory or disciplinary procedures, or appeals against such procedures, all documents which are, or may be, relevant to this matter must not be amended or destroyed without written consent from the Commission.

### **2.6.5 Outsourcing record maintenance**

- (1) Where the licensed fiduciary outsources the maintenance of its own records, client records, or both, the licensed fiduciary must ensure it is satisfied that –

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<sup>11</sup> No. VI of 2018.

- (a) the documents are kept secure and any operational risks are appropriately managed;
- (b) the records are readily accessible;
- (c) all regulatory and confidentiality laws are complied with; and
- (d) the Commission is able to have reasonable access to the records at all reasonable times.

## **2.7 Outsourcing**

### **2.7.1 Application**

- (1) Rule 2.7 does not apply to a personal fiduciary licensee.

#### **Guidance Note:**

Rule 2.7 applies to a licensed fiduciary holding a primary or secondary fiduciary licence in respect of outsourcing irrespective of whether it is outsourced to persons within the same group or to third parties.

### **2.7.2 Board Responsibilities**

- (1) A licensed fiduciary may outsource functions but the Board retains responsibility and accountability for the outsourced functions. Such responsibilities include –
  - (a) the maintenance of effective oversight of the outsourced functions; and
  - (b) ensuring that the licensed fiduciary continues to comply with these Rules and all other relevant legislation.

### **2.7.3 Risk assessment**

- (1) The Board of a licensed fiduciary must be aware of and understand the risks arising from outsourcing its functions.
- (2) Where outsourcing is proposed a licensed fiduciary must carry out a risk assessment which includes, but is not limited to –
  - (a) risks associated with a breakdown in the provision of the outsourced services; and
  - (b) risks which could arise from the failure of the outsourced service provider.

### **2.7.4 Due diligence in selection and monitoring of outsourced service providers and outsourced service provider's performance**

- (1) A licensed fiduciary must –
  - (a) exercise due diligence, on the outsourced service provider, to ensure that they can be satisfied that the outsourced service provider has the ability and capacity to undertake the provision of the service effectively;
  - (b) document the capability and suitability of the proposed provider of the outsourced service; and
  - (c) establish clear internal responsibility for monitoring the conduct of the outsourced services and for reporting to the Board.

### **2.7.5 Outsourcing agreements**

- (1) A licensed fiduciary must ensure that there is a written outsourcing agreement in place for each outsourced activity.
- (2) The outsourcing agreement must –

- (a) have appropriate content reflecting the risks, size, and complexity of the outsourcing arrangements; and
- (b) for significant outsourcing arrangements, include a contractual requirement for the outsourced service provider to –
  - (i) give the Commission the right to direct access to material which it holds in relation to the business of the licensed fiduciary; and
  - (ii) inform and obtain an agreement, from the licensed fiduciary, prior to sub-outsourcing any functions.

#### **2.7.6 Contingency plan**

- (1) The licensed fiduciary must ensure that there is, established and maintained, an appropriate contingency plan which enables alternative arrangements to be set up, with minimal disruption, in case of the failure of the outsourced service provider or any other breakdown in the provision of services.

##### **Guidance Note:**

In complying with rule 2.7.6 the licensed fiduciary must have in place a contingency plan so as to allow it to act promptly should a failure of an outsourced service provider or a breakdown of its services occur. It does not require the licensed fiduciary to purchase or hold unused capacity.

#### **2.8 Employee screening and training**

- (1) A licensed fiduciary shall maintain appropriate and effective procedures when hiring employees, or admitting any person as a partner, for the purpose of ensuring high standards of probity and competence. These procedures should be proportionate to the nature, risk profile and size of the business.

- (2) To ensure that individuals are of the required standard of competence and probity the licensed fiduciary must, at the minimum, give consideration to the collection and confirmation of the following during the recruitment process –
- (a) appropriate references;
  - (b) details of any regulatory action taken against the individual, in any jurisdiction;
  - (c) details of any action, taken against the individual, by any professional body;
  - (d) details of any criminal convictions, including the provision of a check of the individual's criminal record<sup>12</sup>; and
  - (e) details of employment history, qualifications, and professional memberships.
- (3) A licensed fiduciary must ensure that individuals receive any training which is necessary for their roles and -
- (a) formulate plans for training and development; and
  - (b) keep training and development plans current and relevant.

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<sup>12</sup> In accordance with the Rehabilitation of Offenders (Bailiwick of Guernsey) Law 2002, Order in Council No. XIV of 2002.

## **PART 3 – CONDUCT OF BUSINESS**

### **3.1 Integrity**

- (1) As required by Schedule 1 of the Law, a licensed fiduciary must conduct its business with integrity.
- (2) A licensed fiduciary must not attempt to avoid or contract out of its responsibilities set out in these Rules.

### **3.2 Best interests of clients**

- (1) All licensed fiduciaries must –
  - (a) act with due skill, care, and diligence to fulfil the responsibilities undertaken;
  - (b) establish and maintain policies, procedures, and controls to monitor and ensure there are always the requisite capacity and resources to provide the services agreed with its clients;
  - (c) when responsible for exercising discretion for or in relation to clients, take all reasonable steps to obtain sufficient information in order to exercise discretion, or any other power, in a proper manner;
  - (d) only exercise any power or discretion for a proper purpose;
  - (e) ensure that all decisions taken or transactions entered into, by or on behalf of the clients, are actioned in a timely manner and appropriately authorised and handled by persons with an appropriate level of knowledge, experience and status. This includes the establishment, transfer, or closing of business relationships with its clients, where appropriate; and

- (f) maintain confidentiality except where disclosure of information is required or permitted by an applicable law, or authorised by the person to whom the duty of confidentiality is owed.

**Guidance Note:**

For example, policies and procedures as referred to in 3.2(1)(b) could include –

- the formation of a new business committee; or
- scheduled regular meetings to discuss new business;

Controls as referred to in 3.2(1)(b) could include –

- compliance monitoring programmes; or
- regular reviews of human resources / headcounts.

It is recognised that there will be differences in how this rule applies to a primary or secondary fiduciary licensee and a personal fiduciary licensee. As a personal fiduciary licensee is an individual, compliance with this rule, may consist of the personal fiduciary licensee showing consideration of its own capacity prior to accepting a new instruction.

### **3.2.1 Additional rules applying to licensed fiduciaries acting as trustee**

- (1) A licensed fiduciary acting as a trustee must –
- (a) subject to its legal obligations to other persons or bodies, ensure that the interests of beneficiaries are paramount;
  - (b) for a licensed fiduciary holding a primary or secondary fiduciary licence, ensure that any personnel who act as trustees understand their duties under the laws applicable to the trust;
  - (c) subject to the terms of the trust and the provisions of the applicable trust law –
    - (i) upon establishing a trust, take all reasonable measures to ensure that settlors receive any necessary professional advice and that the trust is in accordance with their intentions;

- (ii) identify beneficiaries and their respective interests correctly;
  - (iii) be aware of beneficiaries' personal circumstances, including their current needs, residence, and domicile, so far as those are relevant;
  - (iv) be impartial;
  - (v) ensure that the trust property is held by or vested in the trustee, or is otherwise under its control;
  - (vi) when acting as a trustee, so far as is reasonable, preserve and enhance the value of the trust property; and
  - (vii) invest, distribute, or otherwise manage each trust's assets;
- (d) subject to the terms of the trust, manage the investment and custody of trust assets professionally and responsibly and must –
- (i) exercise, so far as is required by the duties of the trustees in each case, professional oversight of any company owned by the trust;
  - (ii) consider appointing competent agents and managers, including an investment manager, an investment adviser, a property manager; and
  - (iii) have regard to any different interests of beneficiaries and of classes of beneficiaries;
- (e) where applicable, consult with other trustees;
- (f) consider the tax status of the trust;
- (g) where appropriate, file tax returns and provide information to the beneficiaries to enable them to file their own tax returns; and
- (h) consider and, where appropriate, effect the insurance of trust assets.

**Guidance Note:**

For the avoidance of doubt, in the case where pension schemes are written under trust, Pension Service Providers are subject to rule 3.2.1.

**Appointment of asset managers**

A licensed fiduciary must consider whether a relevant expert asset manager should be appointed.

Where an investment manager is appointed, TSPs should record the agreement, instructions, investment parameters and investment benchmarks and require and review regular reports on performance including a valuation and a schedule of assets bought and sold (at least quarterly unless that is inappropriate having regard to the nature of the assets).

If a property manager is appointed TSPs should record any agreements or instructions and require and review regular reports on maintenance of the property and valuation, as appropriate.

Where consideration has been given that no expert should be appointed, TSPs should consider whether regular valuations or other reports are required.

In consideration of a new or ongoing appointment of an expert asset manager a licensed fiduciary should assess whether such an appointment represents value for money. Assessing value for money might include:

- the quality of service provided by the asset manager, including a comparison of the services offered by other asset managers;
- the performance of the asset manager in carrying on the role; and
- the cost of the appointment of the asset manager, including a comparison of the market rates for the services performed;

**Reservation of powers**

Careful consideration should be given to the terms of the trust especially in the context of the granting, reservation or retention of powers which may adversely affect the validity of the trust.

**Exercise of discretion**

A TSP exercising discretion, when acting as trustee of a discretionary trust, should be in a position to demonstrate careful consideration in its decision-making and understanding of its actions.

**3.2.2 Additional rules applying to primary and secondary fiduciary licensees acting as Corporate Service Providers and personal fiduciary licensees carrying out the regulated activity of acting as director**

- (1) A licensed fiduciary must –
  - (a) subject to its legal obligations to other persons or bodies, consider the interests of client companies first;
  - (b) where applicable, ensure that any of its personnel who act as officers of client companies understand their duties under the laws of the jurisdiction in which those client companies are incorporated;
  - (c) where applicable, ensure that assets of the client company are in the name of that company or an appropriate nominee;
  - (d) where appropriate file accurate returns with the relevant authorities;
  - (e) where appropriate consider the tax status of the client company;
  - (f) consider and, where appropriate, effect the insurance of assets of the client company; and
  - (g) when acting as a director, take all reasonable measures to obtain information sufficient to make a decision regarding the company.

**Guidance Note:**

The Commission recognises that different types of services can be provided by a licensed fiduciary. Therefore, the term “where appropriate” or “where applicable” are used in rule 3.2.2(1) to reflect this.

In compliance with rule 3.2.2(1), a licensed fiduciary acting as a director of a company should –

- know the company’s business and finances and have full and up to date information on them;
- give continuing consideration to the company’s financial position before authorising any major expenditure or distribution or the declaration of a dividend; and
- ensure that adequate Board meetings are held.

**3.2.3 Additional rules applying to licensed fiduciaries acting as Foundation Service Providers**

- (1) A primary or secondary fiduciary licensee, acting as an FSP, must ensure that any of its personnel who act as foundation officials understand their duties under the laws of the jurisdiction in which those foundations are registered or established.
- (2) Where a licensed fiduciary takes on the role of councillor it must –
  - (a) act in good faith when exercising its functions, subject to the terms of any constitutional documentation and its legal obligations to other persons or bodies;
  - (b) invest, distribute, or otherwise manage each foundation’s assets in accordance with the applicable law and the foundation’s constitutional documents;
  - (c) manage the investment and custody of foundation assets professionally and responsibly;
  - (d) where appropriate, file accurate returns to the relevant authorities;
  - (e) where appropriate, consider the tax status of the foundation;
  - (f) promptly provide beneficiaries with information, which they are entitled to receive, about the foundation; and

- (g) consider and, where appropriate, effect the insurance of assets of the foundation.
- (3) Where a licensed fiduciary takes on the role of guardian of a foundation it must act in good faith, in the exercise of functions, in order to enforce the foundation's constitutional documents.

### **3.3 Advertisements and communications with clients**

- (1) Without prejudice to The Prospectus Rules, 2021, a licensed fiduciary must ensure that its advertising and communications with clients and prospective clients –
  - (a) are clear, suitable, fair, and not misleading; and
  - (b) do not contain any statement which is untrue.
- (2) A licensed fiduciary must take all reasonable steps to ensure that advertisements and communications do not violate the laws of the Bailiwick of Guernsey and, if advertising outside the Bailiwick, the legislation in force in that country or territory.
- (3) The regulatory status of the licensed fiduciary is to be included on written communications, in relation to regulated activities, and is not to be used in a way which is misleading.
- (4) A licensed fiduciary should not signify in any way that an advertisement is approved by the Commission.
- (5) Subject to the terms of the trust, or contract and any applicable legislation a licensed fiduciary must promptly provide clients with information to which they are entitled or, if this is not possible, promptly explain why such information cannot be provided.

### **3.4 Terms of business in relation to the provision of regulated activities**

- (1) A licensed fiduciary must inform any person with whom it proposes to enter into a contract or agreement in respect of the provision of regulated activities, in writing, of its terms of business and must retain a record of that person's agreement to those terms.
- (2) The agreement shall include, but is not limited to –
  - (a) a clear description of the services to be provided;
  - (b) in the case of a CSP, the scope of the licensed fiduciary's discretion, if any;
  - (c) the fees, including exit fees, to be charged including the nature and scale of the fees and the basis of the calculation of those fees;
  - (d) a record of who is responsible for requests for action and how these are to be given;
  - (e) the means by which complaints can be made;
  - (f) details of the licensee's complaints resolution procedures including, where applicable, contact details for the Channel Islands Financial Ombudsman ("CIFO") and a statement that the CIFO may be available to consider complaints which are not resolved through the licensee's complaints resolution procedure;
  - (g) a record of any provision for the termination of the agreement and the consequences of the termination; and
  - (h) a statement that the licensee is licensed by the Commission.

### **3.5 Interaction with clients**

- (1) A licensed fiduciary must charge fees in accordance with the client agreement and in a fair and transparent manner.

- (2) A licensed fiduciary must ensure that the termination of a relationship is conducted in a professional manner and is on reasonable notice, unless good reason can be given.

### 3.6 Complaints

- (1) A licensed fiduciary must –
  - (a) have and comply with a written procedure for the effective consideration and fair, proper, and timely handling of complaints;
  - (b) maintain a log of all complaints and their current status;
  - (c) as appropriate, explain the complaints handling process to clients;
  - (d) keep the complainant informed about the progress of the complaint including details of any actions being taken to resolve the complaint, except where this conflicts with or is prohibited under another law;
  - (e) inform the complainant that, in cases of significant complaints or where a complaint remains unresolved for longer than three months, the licensed fiduciary is under an obligation to inform the Commission of the complaint;
  - (f) advise the complainant when the complaint is considered closed;
  - (g) where the complaint is not upheld, clearly state the reason for rejecting the complaint; and
  - (h) on agreement with the complainant, ensure that the matter is settled as soon as possible.
- (2) Where the status of the complaint is closed, the licensed fiduciary should ensure that the following information is retained –
  - (a) the nature of the complaint;
  - (b) the reason for the closure of the complaint; and

(c) where applicable, details of any agreed compensation.

## **PART 4 - PRUDENTIAL**

### **4.1 Insurance arrangements**

- (1) A licensed fiduciary must maintain insurance cover which is commensurate with the size and nature of its business. Cover must include professional indemnity insurance (“PII”) and insurance against employee dishonesty or fraud.

**Guidance Note:**

The PII policy can be in the form of commercial insurance as commonly seen in the market or captive insurance. Both forms are accepted given that the risk is transferred from the licensee or its group. The policy may or may not have the term “professional indemnity insurance” included in its description.

The consideration, by a licensee, of its insurance requirements should be clearly documented at local Board or senior management level to demonstrate how the decision was made. The Commission expects all licensees, whether or not they are part of organisations with offices elsewhere, to consider the insurance requirements for the entities in the Bailiwick.

Where a local operation is part of a group and the local Board or management do not consider the cover available to the Guernsey licensee to be adequate, the Commission expects the Board or management to make arrangements to maintain appropriate cover. This may include purchasing a separate policy for the local operation.

- (2) [Subject to (2A) the minimum indemnity limit for any one claim and in the aggregate must equal or exceed the greater of ]<sup>13</sup>–

- (a) three times turnover from regulated activities; or

- (b) £1,000,000,

where the turnover from regulated activities shall be taken from the [latest]<sup>14</sup> audited financial statements or, for new businesses, estimated turnover for the first year.

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<sup>13</sup> Amended by the Fiduciary (Amendment) (No.2) Rules, 2022.

<sup>14</sup> ‘previous year’s’ replaced with ‘latest’ by the Fiduciary (Amendment) (No.2) Rules, 2022.

**Guidance Note:**

The turnover from regulated activities should be taken from the latest audited financial statements at the time of PII renewal.

For the avoidance of doubt, insurance cover based on a prior year's audited financial statements does not need to be amended before the next annual renewal following the release of the following year's financial statements. However, a licensee should consider whether to arrange additional cover in the event that the audited financial statements show a material increase in regulated income.

[(2A) A licensed fiduciary is not required to have aggregate insurance cover exceeding £10,000,000 provided that the Board of the licensee has considered and decided that such level of cover is appropriate and sufficient for its business. The licensee must be able to evidence the board assessment if requested by the Commission.

**Guidance Note:**

For the avoidance of doubt, (2A) is also applicable to a licensee which is part of a group and relies on PII cover provided by the group. For this case, the consideration should ensure that the group PII policy cover is appropriate for the licensee.

(2B) Where the licensed fiduciary also carries out unregulated activities, the licensed fiduciary must consider whether the minimum indemnity limit of its PII policy and scope of the PII cover are appropriate for its business as a whole, taking into account possible claims that may also arise from non-fiduciary business.

(2C) Where a licensed fiduciary also holds a licence under another Regulatory Law the licensed fiduciary must meet the PII rules under whichever regime requires the highest aggregate minimum indemnity limit, unless otherwise instructed by the Commission.]<sup>15</sup>

**Guidance Note:**

Excess: Consideration should be given to the excess per claim on the PII policy and whether it is appropriate for the licensee taking into account its financial position. Specifically, the licensee should ensure that it will be able to fund the excess in the event that a claim is made on the PII policy.

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<sup>15</sup> This section was inserted by The Fiduciary (Amendment) (No.2) Rules, 2022.

- (3) [...]<sup>16</sup>
- (4) For a licensed fiduciary, which holds a primary or secondary fiduciary licence, the Commission will consider arrangements under group policies. [Where a licensed fiduciary relies on captive insurance to meet requirements under this Part, the captive insurer must be licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>17</sup>, or a captive insurer of an equivalent status in Jersey, Gibraltar, Bermuda, Isle of Man, or a country which is a full member of the OECD.]<sup>18</sup>
- (5) [A licensed fiduciary must maintain, at all times, cover for]<sup>19</sup> –
- (a) negligence, errors, or omissions by the licensed fiduciary, [or its employees]<sup>20</sup>;
  - (b) any liability for the dishonest [or fraudulent]<sup>21</sup> acts of employees which may fall on primary or secondary fiduciary licensees;
  - (c) liabilities of its employees who, in the course of their duties to the licensed fiduciary, perform functions in their own names; and
  - (d) liabilities which the licensed fiduciary might incur in any jurisdiction in which it [should reasonably foresee that it may be held liable for damages and costs;
  - (e) where relevant, ombudsman awards; and

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<sup>16</sup> Subrule 3 was repealed by the Fiduciary (Amendment) (No. 2) Rules, 2022.

<sup>17</sup> Order in Council No. XXI of 2002.

<sup>18</sup> This section was inserted by The Fiduciary (Amendment) (No.2) Rules, 2022.

<sup>19</sup> This section was amended by The Fiduciary (Amendment) (No.2) Rules, 2022.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

(f) legal defence costs.]<sup>22</sup>

**Guidance Note:**

Employee: The Law defines “employee” as “an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment”.

For the purposes of subrule 4.1(5)(a), the PII policies should cover current and former employees and any person under contract to perform services or duties to or on behalf of the licensee (Note - time limitation may apply to the period of cover for former employees and will be dependant on the date of cessation of employment).

In meeting subrule 4.1(5)(b), some licensees may rely on a different insurance instrument for indemnity against such liabilities, provided that the licensee is satisfied with such insurance arrangements. Insurance policy wordings vary greatly, licensees should consider whether its policy provides the required cover. For instance, these may be covered under “Crime”, “Fraud” or “Fidelity”. Some policies may contain limitation on “dishonest or fraudulent acts” such as a carve out on deliberate dishonest acts. Where there is such limitation or exception, the licensed fiduciary should assess whether the policy is considered appropriate for its business.

Subrule 4.1(5)(e) applies to licensees which carry out activities within scope of the CIFO such as PSPs.

(6) Licensed fiduciaries must also ensure that they hold insurance policies which cover -

(a) loss and theft of data; and

(b) liability for the replacement, restoration, or reconstruction of data.

(7) A licensed fiduciary must have adequate procedures in place to ensure compliance with all terms and conditions set out in its PII policy particularly in relation to the timely notification of events, to its insurer, which may lead to a claim on the policy.

**Guidance Note:**

For a licensed fiduciary which holds a personal fiduciary licence the insurance arrangement may be provided for by his or her client.

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<sup>22</sup> This section was amended by the Fiduciary (Amendment)(No.2) Rules, 2022.

## 4.2 Financial resources

### 4.2.1 Application

- (1) Rule 4.2 applies to primary fiduciary licensees except where the licensee also holds a licence issued under another of the Regulatory Laws.

#### **Guidance Note:**

A licensed fiduciary should maintain a sound financial position in order to be able to facilitate an orderly wind down or manage a distressed situation.

### 4.2.2 Capital base requirements

- (1) A licensee must maintain a minimum of £25,000 paid-up share capital.

### 4.2.3 Liquidity Requirements

- (1) A licensee must ensure that, at all times, it is able to meet its liabilities as they fall due.
- (2) A licensee must maintain liquid assets not less than 25% of annual expenditure.
- (3) The annual expenditure is the higher of –
  - (a) the total budgeted expenditure for the current year; or
  - (b) the expenditure as per the latest audited financial statements.
- (4) The following items can be deducted from the annual expenditure –
  - (a) depreciation and amortisation;

- (b) bad debt expense;
  - (c) bonuses paid to employees, including directors, that are entirely discretionary in nature;
  - (d) exceptional costs which are incurred outside the day-to-day activities of the licensee and are not expected to recur and are agreed, in advance, with the Commission; and
  - (e) any other items as permitted by the Commission.
- (5) Liquid assets of a licensee shall be calculated as the sum of –
- (a) current assets after deduction of any illiquid assets;
  - (b) deduction of current liabilities; and
  - (c) adjustments to allow for qualifying items.

**Guidance Note:*****Illiquid Assets***

Examples of current assets which are considered illiquid are included in the list below. The list is not exhaustive and therefore a licensee must exercise appropriate judgement when making the adjustment to ensure that assets which could be considered illiquid within a 90-day period are excluded in order to achieve the objective of the liquidity requirements.

1. Debtors which exceed 90 days from the invoice date.
2. Work In Progress which is not receivable within 90 days of the date of the calculation.
3. Any prepayments which relate to goods or services to be received or performed after 90 days of the date of the calculation.
4. Restricted cash and restricted cash equivalents.
5. Amounts due from related parties.

5.1 All amounts due from related parties are considered illiquid unless they are in the normal course of business and the outstanding balances are settled within 90 days. A loan to a related party is not typically considered liquid, even if it could be recovered within 90 days, as this would not be in the normal course of business; and

5.2 Amounts due from related parties cannot be netted-off against amounts due to related parties unless there is a legally enforceable netting agreement in place.

6. Any other items permitted by the Commission.

***Qualifying Items***

The following list contains items which may be used to adjust the liquid assets when calculating the liquidity requirement.

1. Deferred income – Where a licensee has received income which is billed in advance of it providing the services.
2. Any other items permitted by the Commission.

(6) The amount of the excess on a licensee's PII ("the PI Excess") should be deducted when calculating liquid assets.

(7) The amount to be added to the current liabilities in respect of PI Excess is calculated as the PI Excess multiplied by the number of likely excess payments in the forthcoming three month period, subject always to a minimum multiplier of one.

**Guidance Note:**

*Calculation Example*

<b>Current Assets</b>	x
Less: Illiquid Assets	<u>(x)</u>
<b>A [Adjusted Current Assets]</b>	x
Less: Current Liabilities	(x)
PI Insurance Excess	<u>(x)</u>
<b>B [Liquid Assets]</b>	x
Add: Any Qualifying Items	x
<b>C [Liquid Assets (as adjusted)]</b>	<u><u>x</u></u>
 Percentage of Liquid Assets to Annual Expenditure	 x
 Liquidity Requirements	 <u>(x)</u>
<b>Liquidity Requirement Excess</b>	<u><u>x</u></u>

**4.2.4 Compliance**

(1) A licensee must –

- (a) as a minimum calculate and document, every quarter, its compliance with the requirements of rule 4.2.3;
- (b) where the nature of the business requires, undertake the calculation in rule 4.2.3 more frequently than every quarter;
- (c) submit, to the Commission, annually, together with the audited financial statements –
  - (i) the ratio of the liquid assets to the annual expenditure;

- (ii) the basis of the calculation; and
  - (iii) a statement by an auditor confirming that rule 4.2.3 is satisfied.
- (2) The Commission may increase the frequency of the calculation set out in rule 4.2.4 (1)(a) to monthly or other such period as it may determine if an event occurs which has, or may have, a material adverse effect on the licensee's financial resources.

#### **4.2.5 Notification**

- (1) A licensee must immediately notify the Commission if -
- (a) the nominal value of its fully paid shares is less than the amount referred to in rule 4.2.2;
  - (b) its liquid assets fall, or are expected to fall, below the required amount referred to in rule 4.2.3;
  - (c) it has a reason to believe that it will be unable to meet its liabilities as they fall due;
- and a full explanation of the circumstances must also be provided at that time.
- (2) If a licensee submits a notification to the Commission it must prepare a documented plan of action which must be made available, to the Commission, on request.

#### **Guidance Note:**

The plan of action should include consideration of the financial position and actions taken by the Board or partners of the licensed fiduciary.

## **PART 5 – COOPERATION WITH THE COMMISSION**

### **5.1 General provision**

- (1) A licensed fiduciary must deal openly and honestly with, and cooperate with, the Commission and any other regulatory authorities to whose supervision they are subject.

### **5.2 Notification by a licensed fiduciary**

- (1) A licensed fiduciary must notify the Commission in writing as soon as is practicable but, in any case, within 14 days of becoming aware of the following –
  - (a) any significant changes to the information submitted as part of an application for a fiduciary licence;
  - (b) any matter that might reasonably be expected to affect its ability to –
    - (i) maintain the minimum criteria for licensing;
    - (ii) undertake its regulated activities; or
    - (iii) comply with the Rules;
  - (c) the agreement, or refusal, to grant any application made, either by the licensed fiduciary or any holding company or subsidiary, for authorisation to carry on any financial services business in any country or territory;
  - (d) the revocation, or the attachment of conditions to, an authorisation for the licensed fiduciary, its holding company or subsidiary, to carry on any financial services business in any country or territory;

- (e) the commencement of proceedings against a licensed fiduciary, its holding company or subsidiary, in any country or territory;
- (f) the appointment of anyone acting under any regulatory authority to investigate the affairs of the licensed fiduciary, its holding company or subsidiary;
- (g) the imposition of disciplinary measures, or sanctions, against the licensed fiduciary, its holding company or subsidiary, by any regulatory authority;
- (h) the conviction of the licensed fiduciary, its holding company or subsidiary, or any personnel, of any offence, under any jurisdiction, relating to financial services, companies, or insolvency laws where such offences involve fraud, dishonesty, money laundering, or tax evasion;
- (i) with regard to outsourcing –
  - (i) any significant outsourcing arrangements entered into;
  - (ii) any material changes to significant outsourcing arrangements; and
  - (iii) where there is a failure of an outsourced service provider, or other breakdown in the provision of outsourced services, which causes significant disruption to the licensed fiduciary's business;
- (j) with regard to PII –
  - (i) when a notification under a PII policy is made to its insurer; or
  - (ii) if there is any payment made, by the insurers, under the PII cover;
- (k) with regard to complaints –
  - (i) of any significant complaint made against the licensed fiduciary;
  - (ii) when the licensed fiduciary has been unable to resolve a complaint within three months of the date of the initial receipt of the complaint; or
  - (iii) when a complaint is upheld by the Channel Islands Financial Ombudsman;

- (l) the imposition of a sanction against the licensee following breach determination by the Data Protection Authority;
  - (m) the making, or the proposal for the making, of a compromise or arrangement with any creditors of the licensed fiduciary;
  - (n) the summoning of a meeting to consider a resolution to wind up a licensed fiduciary or any of its holding companies or subsidiaries;
  - (o) the presentation of any application for the commencement of insolvency proceedings including *désastre*, winding up, or the appointment of a receiver, administrator or liquidator under the law of any country, or territory, in relation to the licensed fiduciary, or to a company which is a holding company or subsidiary of the licensed fiduciary;
  - (p) the making of an application to wind up, or to dissolve, any licensed fiduciary which is a partnership; including limited partnerships and limited liability partnerships;
  - (q) changes to a notification of an approved supervised role;
  - (r) changes to a notification of a vetted supervised role; and
  - (s) changes to a notification of a notified supervised role.
- (2) Notifications made under rule 5.2(1)(o) and (p) above must be accompanied by a cessation of business plan setting out arrangements that the licensed fiduciary proposes to put in place in relation to its clients.

**Guidance Note:**

This list is not exhaustive and is intended to indicate the type of event of which the Commission would expect to be notified but it does not limit the scope of subsection 109(2) of the Financial Services Business (Enforcement Powers)(Bailiwick of Guernsey) Law, 2021, or any provision of the Law.

## **PART 6 – GENERAL PROVISION**

### **6.1 Interpretation**

- (1) Terms have their ordinary meaning unless specifically defined in the Law or in these Rules.
- (2) The following definitions should be followed -

**“4-eyes criterion”** has the meaning given to it in paragraph 3 of Schedule 1 to the Law;

**“actively trade”** means to provide services, classed as regulated activity under the Law, to third parties for which a fee, commission, or other form of income is received directly by the licensee and recognised on its income statement;

**Guidance Note:**

For the purposes of these Rules the term ‘third party’, within the definition of “actively trade” is intended to include trusts.

**“the AML Handbook”** means the Handbook on Countering Financial Crime and Terrorist Financing;

**“annual expenditure”** means total revenue of any type less profit before appropriations. In the case of a loss, the amount of the loss shall be added to the total revenue. Taxation forms a part of the annual expenditure;

**“Annual Return Period”** means the period of one year commencing on 1<sup>st</sup> July, in each and every year and ending on the 30<sup>th</sup> June each and every following year;

**“Approved Bank”** means an institution which is -

- (a) licensed under the Banking Supervision (Bailiwick of Guernsey) Law 2020;
- (b) registered under the Banking Business (Jersey) Law 1991<sup>23</sup>;

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<sup>23</sup> Chapter 13.075.

- (c) licensed under the Isle of Man Financial Services Act 2008<sup>24</sup> to carry on a regulated activity falling within Class 1 (deposit-taking businesses);
- (d) authorised under the Financial Service and Markets Act 2000<sup>25</sup> of the United Kingdom to carry on the regulated activity of deposit taking;
- (e) a building society, registered and incorporated under the Building Societies Act 1986<sup>26</sup> of the United Kingdom, which operates a deposit-taking business without restriction;
- (f) a bank which is supervised by the central bank or other banking regulator of a member state of the Organisation for Economic Cooperation and Development (“OECD”);
- (g) a credit institution established in a European Union (“EU”) or European Economic Area (“EEA”) state and duly authorised by the relevant home state regulator; or
- (h) any other bank where the licensee is satisfied with its capital adequacy and that the applicable laws and regulations governing such bank provides a similar level of protection of client money to institutions listed above;

**Guidance Note:**

For (h), the licensee should ensure that the bank meets the following criteria:

- 1) is subject to regulation by a national banking regulator;
- 2) is required to provide audited accounts annually;
- 3) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time) and has a surplus of revenue over expenditure for the last 2 financial years; and
- 4) has an annual audit report which is not materially qualified.

“**Board**” has the meaning given to it by section 133 of the Companies (Guernsey) Law, 2008<sup>27</sup> or, in the case of an unincorporated entity, the committee or managing board of a partnership or other similar governing body;

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<sup>24</sup> AT 8 of 2008.

<sup>25</sup> 2000 c. 8.

<sup>26</sup> 1986 c. 83.

<sup>27</sup> Order In Council No. VIII of 2008.

**“Client Bank Account”** means an account held by a licensed fiduciary at an approved bank which holds, or is intended to hold, money on behalf of one or more clients;

**“Client Company”** means a body to or for which a Corporate Service Provider has agreed to provide services constituting company administration business;

**“Client Entity Bank Account”** means an account at an approved bank, in the name of the client or a client-related entity and which is not in the name of a licensed fiduciary;

**“company administration business”** means the activities described in subsection 2(1)(b)(i) and (ii) of the Law, when carried on by way of business, and not exempt from regulation under any of the provisions of section 3 of the Law;

**“complaint”** means any oral or written expression of dissatisfaction, whether justified or not, from or on behalf of a person about the provision, or failure to provide a financial service in respect of regulated activities which alleges that the complainant has suffered, or may suffer, financial loss, material distress, or material inconvenience;

**“Corporate Service Provider (“CSP”)** means a person carrying on company administration business;

**“current liabilities”** means the liabilities which are payable within one year;

**“foundation business”** means the activities described in subsection 2(1)(d) of the Law when carried on by way of business and not exempt from regulation under section 3 of the Law;

**“Foundation Service Provider (“FSP”)** means a person, whether a corporate or a natural person, carrying on foundation business;

**“Outsourcing”** means an arrangement, of any form, between a licensed fiduciary, which holds a primary or secondary fiduciary licence, and an outsourced service provider, by which the outsourced service provider performs an activity that would otherwise be undertaken by the licensed fiduciary;

**“pension business”** means the activities described in subsection 2(1)(e) of the Law when carried on by way of business and not exempt from regulation under section 3 of the Law;

**“Pension Service Provider (“PSP”)**” means a person carrying on pension business;

**“regulated activities”** means the activities described in section 2 of the Law when carried on by way of business and not exempt from regulation under any provision of section 3 of the Law;

**“senior executives”** means the chief executive, and persons holding a supervised role, exercising day-to-day managerial functions of the licensee;

**“significant complaint”** means a complaint alleging a breach of the Law, *mala fides*, malpractice, or impropriety, or repetition or recurrence of a matter previously complained of (whether significant or otherwise);

**“significant outsourcing arrangements”** means an outsourcing arrangement which in the event of a service failure or security breach has the potential to –

- (a) materially impact the licensed fiduciary’s business operations, reputation, or profitability; or
- (b) materially impact the licensed fiduciary’s ability to manage risk and comply with applicable laws and regulations; or
- (c) involves any unauthorised access or disclosure, loss, or theft of client information;

**“trust business”** means the activities described in subsection 2(1)(a) of the Law when carried out by way of business and not exempt from regulation under any of the provisions of section 3 of the Law;

**“Trust Service Provider (“TSP”)**” means a person, whether a corporate or a natural person, carrying on trust business.

## **PART 7 - REVOCATIONS, TRANSITIONALS, CITATION AND COMMENCEMENT**

### **7.1. Revocations**

#### **7.1.1 Revocation of The Fiduciary Rules, 2020**

The Fiduciary Rules, 2020 are revoked.

#### **7.1.2 Revocation of The Regulation of Fiduciaries (Annual Return) Regulations, 2017**

The Regulation of Fiduciaries (Annual Return) Regulations, 2017 are revoked.

#### **7.1.3 Revocation of The Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2012**

The Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2012 are revoked.

### **7.1. A [Transitional provisions**

- (1) Licensees must comply with the amendments made to rule 4.1, by the Fiduciary (Amendment)(No.2) Rules, 2022, at the next insurance renewal following the date on which the Fiduciary (Amendment)(No.2) Rules, 2022 come into force.]<sup>28</sup>

### **7.2 Citation and commencement**

- (2) These rules may be cited as The Fiduciary Rules 2021.
- (3) These rules shall come into force on 1<sup>st</sup> November 2021.

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<sup>28</sup> Transitional provisions were inserted by the Fiduciary (Amendment)(No.2) Rules, 2022.