

The Financial Resources Requirements Rules, 2018

The Financial Resources Requirements Rules, 2018

The Guernsey Financial Services Commission (“the Commission”), in exercise of the powers conferred on it by sections 31A, 31B of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 hereby makes the following rules.

1. Introduction

1.1 Citation, commencement and application

- (a) These rules may be cited as the Financial Resources Requirements Rules 2018 (“the FRR Rules”).
- (b) These rules come into force on the 28th February 2018.
- (c) The FRR Rules apply to a *full fiduciary licensee* which is licensed under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, save where the licensee also holds a licence issued under the Banking Supervision (Bailiwick of Guernsey) Law, 1994, the Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 or the Insurance Business (Bailiwick of Guernsey) Law 2002.

1.2 Interpretation

“*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. For the avoidance of doubt, taxation forms a part of the annual expenditure.

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

“*full fiduciary licensee*” means for the purposes of these Rules in any case where more than one full fiduciary licence is held by a group, the Licensee nominated to the Commission as the Lead Licensee.

“*illiquid assets*” means any current assets which are considered illiquid. A non-exhaustive list is set out in Appendix 1.

“*liquid assets*” are the sum of the calculation in 3.4 to 3.6, see Appendix 3 for a calculation example.

“*qualifying items*” means items which can adjust the *liquid assets* when calculating the liquidity requirement. A non-exhaustive list is set out in Appendix 2.

1.3 Overriding Objective

These rules are intended to ensure that all *full fiduciary licensees* are in a sound financial position and are therefore able to facilitate an orderly wind down or manage a distressed situation.

2. Capital base requirements

A *full fiduciary licensee* shall maintain a minimum of £25,000 paid-up share capital.

3. Liquidity requirements

- 3.1 A *full fiduciary licensee* shall ensure that at all times it is able to meet its liabilities as they fall due.
- 3.2 A *full fiduciary licensee* shall maintain appropriate *liquid assets* not less than 25% of *annual expenditure*.
- 3.3 (a) The *annual expenditure* is the higher of:
- the total budgeted expenditure for the current year; and
 - the expenditure as per the latest audited financial statements.
- (b) The following items can be deducted from the *annual expenditure*:
- depreciation and amortisation;
 - bad debt expense;
 - bonuses payable to employees (including directors) that are entirely discretionary in nature; and
 - exceptional costs which are incurred outside of the day-to-day activities of the *full fiduciary licensees* and are not expected to recur, and are agreed in advance with the Commission.
- 3.4 In calculating the *liquid assets* of a *full fiduciary licensee*:
- (a) Take current assets and deduct any *illiquid assets*
- (b) From the sum of (a) (adjusted current assets) above, deduct *current liabilities*
- (c) From the sum of (b) above, make adjustments to allow for *qualifying items*.
- 3.5 The amount of the excess on a *full fiduciary licensee*'s professional indemnity insurance ("the PI Excess") should be treated as an additional liability when calculating *current liabilities* for the purposes of calculation of *liquid assets*.
- 3.6 For the avoidance of doubt the amount of the PI Excess added to the *current liabilities* is one for each likely excess payment in the forthcoming 3-month period, subject always to a minimum of one.

4. Compliance

- 4.1 A *full fiduciary licensee* must give effect to the overriding objective in rule 1.3 and:
- (a) as a minimum calculate and document every quarter its compliance with the requirements of rule 3;
- (b) where the nature of its business requires, undertake the calculation in 4.1(a) more frequently than every quarter;
- (c) if so required by the Commission, provide it with evidence of the calculations in 4.1(a) or (b) to demonstrate compliance with the FRR Rules;
- (d) submit, annually to the Commission, along with its audited financial statements:

- 1) the ratio of the *liquid assets* to the *annual expenditure*;
- 2) the basis of the calculation; and
- 3) a statement by an auditor confirming that rule 3 is satisfied.

4.2 The Commission may increase the frequency of the calculation under rule 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 *full fiduciary licensee*'s financial resources.

5. Notification

5.1 A *full fiduciary 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 2; or
- (b) its *liquid assets* fall, or are expected to fall below the required amount referred to in rule 3;
- (c) it has a reason to believe that it will be unable to meet its liabilities as they fall due.

A full explanation of the circumstances must also be provided at that time.

5.2 If a *full fiduciary licensee* submits a notification to the Commission under rule 5.1, the *full fiduciary licensee* must prepare a documented plan of action. If requested, the plan must be made available to the Commission within 30 days following the notification. The Commission would expect this to include demonstrable consideration of the financial position and action plan by the Board of Directors or Partners.

6. Transitional Provisions

Full fiduciary licensees have until 31 March 2019 to meet the requirements of the FRR Rules. Until that time, a *full fiduciary licensee* must comply with the financial resources requirements under the Codes of Practice for Trust Service Providers, Corporate Service Providers and Foundation Service Providers in force on 27th February 2018. For the avoidance of doubt, the FRR Rules will apply to all audited financial statements which have periods ending on or after 31 March 2019.

Appendix 1 – Illiquid Assets

Examples of current assets which are considered illiquid are included in the list below. The list is not exhaustive and therefore a *full fiduciary 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 requirement.

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. For the avoidance of doubt, 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 as permitted by the Commission.

Appendix 2 – 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 *full fiduciary licensee* has received income which is billed in advance of it providing the services.
2. Any other items as permitted by the Commission.

Appendix 3 – Calculation Example

Current Assets	x	
Less: <i>Illiquid Assets</i> , per Appendix 1	(x)	
A [Adjusted Current Assets]	x	
Less: <i>Current Liabilities</i>	(x)	
PI Insurance Excess (see Rule 3.5)	(x)	
B [Liquid Assets]	x	
Add: Any Qualifying Items, per Appendix 2	x	
C [Liquid Assets (as adjusted)]	x	
Percentage of Liquid Assets to <i>Annual Expenditure</i> (see Rule 3.3)	x	
Liquidity Requirement (see Rule 3.2)	(x)	
Liquidity Requirement Excess	x	