

THE FIDUCIARY HANDBOOK, 20XX

Made:

Coming into Operation:

The Guernsey Financial Services Commission (“the Commission”), in exercise of the powers conferred on it by sections 31A, 31B and 31C of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000¹ (“the Law”), makes the following Rules.

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¹ Ordres en Conseil No. I of 2001, as amended.

Contents

PART 1 - INTRODUCTION	3
PART 2 – CORPORATE GOVERNANCE AND EFFECTIVE MANAGEMENT	5
2.1 Corporate Governance	5
2.2 Competence and effective management.....	6
2.3 Conflict of interest	8
2.4 Accounts rules.....	9
2.5 Client money	12
2.6 Record keeping	17
2.7 Outsourcing.....	20
2.8 Employee screening and training	23
PART 3 – CONDUCT OF BUSINESS	25
3.1 Integrity.....	25
3.2 Best interests of Clients	25
3.3 Advertisement and communications with clients	30
3.4 Terms of business	31
3.5 Interaction with clients.....	32
3.6 Complaints	32
PART 4 - PRUDENTIAL	34
4.1 Insurance arrangements	34
4.2 Financial resources.....	35
PART 5 – COOPERATION WITH THE COMMISSION.....	42
5.1 General provision.....	42
5.2 Notification by a licensed fiduciary	42
PART 6 – GENERAL PROVISION	45
6.1 Interpretation.....	45
6.2 Citation and commencement.....	49
PART 7 – TRANSITIONAL ARRANGEMENTS, REVOCATIONS AND AMENDMENTS	50

PART 1 - INTRODUCTION

1.1 Commencement

- (1) The Fiduciary Handbook 20XX (“Fiduciary Handbook”) shall come into operation on ****.

1.2 Application

- (1) The Fiduciary Handbook replaces -
 - (a) Code of Practice – Corporate Service Providers²;
 - (b) Code of Practice – Foundation Services Providers³;
 - (c) Code of Practice – Trust Service Providers⁴;
 - (d) Code of Practice – Company Directors⁵;
 - (e) The Regulation of Fiduciaries (Accounts) Rules, 2001⁶;
 - (f) The Financial Resources Requirements Rules, 2018⁷; and
 - (g) Rules 1 to 9 of the Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules (No. 2) 2017⁸.
- (2) The Commission may in its absolute discretion, by written notice to a licensed fiduciary, exclude or modify the application of any provision of this Handbook

² Made on July 2009 (as amended).

³ Made on 26 July 2013 (as amended).

⁴ Made on 3 July 2009 (as amended).

⁵ Made on 3 July 2009 (as amended).

⁶ Made on 20 March 2001 (as amended).

⁷ Version 1.0.

⁸ No. 57 of 2017.

if the Commission is satisfied that any such derogation will not prejudice the interests of the clients of the licensed fiduciary.

- (3) The Fiduciary Handbook takes a two-level approach –
 - (a) the rules set out the standards to be met by the licensed fiduciary; and
 - (b) the guidance presents suggested ways of showing compliance with the rules.
- (4) 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.

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PART 2 – CORPORATE GOVERNANCE AND EFFECTIVE MANAGEMENT

2.1 Corporate Governance

2.1.1 Application

- (1) Rule 2.1 applies to full fiduciary licence holders.

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 serious 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 this Handbook and the Law;
 - (ii) recruits, trains and supervises relevant personnel to ensure compliance with this Handbook and the Law; and
 - (iii) operates robust arrangements for meeting the requirements of this Handbook and all other relevant legislation;
 - (b) retains responsibility for any functions it outsources at all times; and

- (c) must evaluate its compliance with the Code of Corporate Governance⁹.

2.2 Competence and effective management

- (1) A licensed fiduciary which is –
 - (a) a Trust Service Provider (“TSP”) must understand and discharge fiduciary and other duties arising under the trust deed, this Handbook and the legislation applicable to each trust; and/or
 - (b) a Corporate Service Provider (“CSP”), a Foundation Service Provider (“FSP”) or a Pension Service Provider (“PSP”) must 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 full 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 the Law and this Handbook;
 - (d) keep a breaches register which logs all instances of non-compliance with this Handbook; and
 - (e) satisfy the minimum criteria for licensing.

⁹ Instrument made on 30 September 2011 (as amended).

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 TSP, an understanding on the part of the personnel of both the TSP's duties to clients and the extent to which the TSP must exercise independent judgment in performing its functions;
- for a 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 CSP's duties to client companies and the extent to which the CSP must exercise independent judgment in performing its functions; and
- for an FSP, an understanding on the part of the personnel of the constitutional documentation of client foundations and of both the FSP's duties to foundations and the extent to which the FSP must exercise independent judgment in performing its functions.

Fit and Proper – is as defined in Schedule 1 of the Law and the “Fit and Proper Guidance” issued by the Commission (5th October 2018, as amended).

4-eyes Criterion

The “four-eyes” criterion requires at least two individuals, who are resident in the Bailiwick, to direct the business of a full fiduciary licence holder. It is expected that the individuals will be either executive directors or persons granted powers by, and reporting immediately to, the board. These provisions are designed 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. Both persons must have 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. Both persons should have sufficient understanding and time available to discharge their duties effectively, taking into account the number and importance of their other commitments.

2.1.1 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 this Handbook, the AML Handbook¹⁰, the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003¹¹ and any other related legislation, not solicit, receive or accept bribes or gifts, inducements, rewards or advantage that is likely to conflict with the licensees' duty to any Client;
- (e) not profit from holding client money.

Guidance Note:

Licensed fiduciaries are prohibited from receiving and retaining any commission or monetary or non-monetary benefits from the holding of client money. Payments or benefits can be received but they must be passed on to clients, in a similar manner as how fees/ charges incurred on client bank accounts are passed on to clients. For the avoidance of doubt, interests received on client money must not be retained by licensees.

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

¹⁰ Handbook on Countering Financial Crime and Terrorist Financing, Guernsey Financial Services Commission, 11th March 2019 (as amended).

¹¹ Order in Council No.1 of 2004, as amended.

- (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 twelve months, and
 - (b) must not be altered
- without written permission obtained from the Commission.

2.4.2 Reporting to the Commission

Personal Fiduciary Licence Holders

- (1) The Commission must be provided with particulars of the licensee's financial position, with regards to regulated activities, in relation to each accounting period and within four months of the end of that accounting period.

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 licence holder's regulated activities for the reporting period is therefore sufficient.

Full Fiduciary Licence Holders

- (2) Licensees shall 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 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 United Kingdom Accounting Standards¹², United States Accounting Standards¹³ or International Accounting Standards¹⁴; 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.
- (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 may be submitted in such electronic format as the Commission makes available from time to time.

¹² As issued by the Financial Reporting Council.

¹³ As issued by the Financial Accounting Standards Board.

¹⁴ As issued by the International Accounting Standards Committee.

2.5 Client money

2.5.1 Application

- (1) Rule 2.5 applies to licensed fiduciaries which hold or have control of client money.

Guidance Note:

Under these Rules "Client Money" means money which -

- (a) is held or is received on behalf of a client; or
- (b) is owed to a client whether or not immediately due or payable;

The Fiduciaries 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.

In the case of a trust where there is more than one licensed fiduciary controlling 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.

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 their operations, which prevent the inappropriate use of Client Money.

2.5.3 Operation of Client Bank Accounts

- (1) A licensed fiduciary must ensure that Client Money is held separately from their own money in a Client Bank Account.
- (2) Any Client's Money must be held separately from another Clients' Money, unless –
 - (a) it is impracticable or impossible to do so, or
 - (b) it is clearly and specifically agreed with the Client; and
 - (c) it is not contrary to the best interests of the Clients.
- (3) The title of the Client Bank Account shall sufficiently distinguish the account from any other account containing money that belongs to the licensed fiduciary.
- (4) Prior to holding or receiving any 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.

Guidance Note:

A licensed fiduciary is required to keep the funds of each client, Client Company, trust or foundation separate from every other but, in limited circumstances, a Client Bank Account may be used to hold Client Money for more than one Client. For example –

- to receive client funds prior to opening an individual Client 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 individual Client Bank Account does not have a cheque book or making final distributions or onward investment at the end of a Client relationship;

In such circumstances Client Money should not be left on the pooled account for extended periods. Where Client Money sits on the pooled account this should be subject to Board oversight and where this occurs for more than 30 days the Commission would expect to be notified by the licensed fiduciary.

It is also recognised that in the case of multi-member pension schemes, including occupational pension schemes, it may not be practical to operate individual bank accounts for each member.

2.5.4 **Withdrawal of Client Money / interest**

- (1) A licensed fiduciary must have procedures in place for ensuring that all withdrawals from a Client Bank Account are –
 - (a) subject to the appropriate level of authorisation;
 - (b) in accordance with any constitutional documents; and
 - (c) subject to, at the minimum, dual signatures.
- (2) A licensed fiduciary must not withdraw money from a Client Bank Account unless –

- (a) it is not 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 into a bank account in the Client's own name.
- (3) A licensed fiduciary should not withdraw Client Money to pay for outstanding fees unless expressly permitted under the trust deed, the terms of business or with the express agreement of the Client.

2.5.5 **Overdrawn**

- (1) As far as possible a licensed fiduciary must ensure that a Client Bank Account does not become overdrawn.

Guidance Note:

In the event that a Client Bank Account becomes overdrawn, 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.

2.5.6 **Reconciliation**

- (1) A licensed fiduciary must ensure that a reconciliation is carried out between their records of Client Money and any statement received from a bank in which that Client Money is kept.
- (2) A licensed fiduciary shall perform the reconciliation at least once a month.

- (3) A licensed fiduciary must maintain accurate and up to date records in relation to Client Money which enable them 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:

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

2.5.7 Review of controls over Client Money

- (1) A licensed fiduciary must implement an annual independent review of the controls over 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 Client Money; and
 - (b) be performed by an appropriately qualified independent person who may be an internal or external party.

Guidance Note:

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

2.6 Record keeping

2.6.1 Application

- (1) Section 2.6 does not apply to PSPs. When carrying out pension business a PSP should refer to The Pension Scheme and Gratuity Scheme Rules, 2019 for record keeping requirements.

2.6.2 Adequate Records

- (1) A licensed fiduciary must ensure that adequate records relating to trust business, company administration and foundation business are kept and preserved. Such records should include, but are not limited to, the following –
 - (a) in the case of a TSP; records of all trusts which the TSP administers or of which it is a trustee 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 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 an 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 this Handbook and any other applicable legislation. These arrangements must –

(a) deliver effective information and document management ensuring that all 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:

When carrying out trust or foundation business for a Client where there is another licensed fiduciary carrying out a similar role, a licensed fiduciary holding a personal licence (“PFL”) 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 PFL may rely on another licensed fiduciary regarding record keeping it is, ultimately, the responsibility of the PFL to ensure compliance with this Rule.

When carrying out pension business a PSP should refer to The Pension Scheme and Gratuity Scheme Rules, 2019 for record keeping requirements.

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 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, 2017¹⁵.

¹⁵ No. VI of 2018 (as amended).

2.6.4 Retention of records

- (1) All documents prepared in accordance with this Handbook must be retained for a minimum 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.
- (2) Documents which are, or may be, relevant to any matter which is subject to investigatory or disciplinary procedures, or appeals against such procedures, 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 –
 - (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 applies to full fiduciary licence holders.

Guidance Note:

Rule 2.7 applies to a licensed fiduciary holding a full 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 the Fiduciary Handbook and the Law.

2.7.3 Evaluation of risks

- (1) The Board of a licensed fiduciary must be fully aware of and understand the risks arising from outsourcing its functions.
- (2) Where outsourcing is proposed a licensed fiduciary must carry out a risk evaluation 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 provider.

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

- (1) A licensed fiduciary must –
 - (a) exercise due diligence, on the service provider, to ensure that they can be satisfied that the 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 services 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 and 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 service provider or any other breakdown in the provision of services.

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 firm.
- (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 record¹⁶; 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 -

¹⁶ Subject to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law 2002, Order in Council No. XIV of 2002, as amended.

(a) formulate plans for training and development; and

(b) keep training and development plans current and relevant.

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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 this Handbook.

3.2 Best interests of Clients

- (1) All licensed fiduciaries, when carrying out trust, company administration, foundation or pensions business, 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 is 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, takes 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 customers, where appropriate; and

- (f) maintain confidentiality except where disclosure of information is required or permitted by an applicable law, or by guidance published by the Commission, 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(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(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 full fiduciary licence holder and a personal fiduciary licence holder. As a personal fiduciary license holder is an individual, compliance with this Rule, may consist of showing consideration of capacity prior to accepting 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 their legal obligations to other persons or bodies, ensure that the interests of beneficiaries are paramount;
- (b) for a licensed fiduciary holding a full 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, use their best endeavours 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 investment managers; 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:

Appointment of asset managers

Where investment managers are 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 valuation and maintenance of the property.

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 licensed fiduciaries acting as CSPs

- (1) A licensed fiduciary acting as a CSP must –
 - (a) subject to its legal obligations to other persons or bodies, consider the interests of client companies first;
 - (b) ensure that any 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;

- (d) where appropriate file accurate returns with the relevant authorities;
- (e) where appropriate consider the tax status of the client company; and
- (f) consider and, where appropriate, effect the insurance of assets of the client company.

3.2.3 Additional rules applying to licensed fiduciaries acting as FSPs

- (1) A full fiduciary licence holder, acting as an FSP, must ensure that any 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 they must –
 - (a) act in good faith when exercising their functions, subject to the terms of any constitutional documentation and their legal obligations to other persons or bodies;
 - (b) invest, distribute or otherwise manage each foundation’s assets in accordance with the 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 they must act in good faith, in the exercise of functions, in order to enforce the Constitution.

3.3 Advertisement and communications with clients

- (1) Without prejudice to either the Prospectus Rules¹⁷ or the Regulations of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2012¹⁸, a licensed fiduciary must ensure that their advertising and communications with Clients and prospective Clients –
 - (a) are clear, suitable, fair and not misleading; and
 - (b) do not contain any statement, promise or forecast which is untrue.
- (2) A licensed fiduciary shall 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) A licensed fiduciary must, as far as possible, avoid placing the Bailiwick at the risk of being brought into disrepute.
- (4) The regulatory status of the licensed fiduciary is to be included on all communications and is not to be used in a way which is misleading.
- (5) A licensed fiduciary should not signify in any way that an advertisement is approved by the Commission.
- (6) 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.

¹⁷ Published by the Commission and available at:
https://www.gfsc.gg/sites/default/files/20180709%20Prospectus%20Rules_0.pdf.

¹⁸ No. 28 of 2012.

Guidance Note:

Personal fiduciary license holders should be aware of the Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2012, as amended, which prohibit them from advertising.

The provisions under rule 3.3 apply, to personal fiduciary license holders, only in relation to communications with clients.

3.4 Terms of business

- (1) A licensed fiduciary must discuss terms of business with any person with whom they propose to enter into a contract or agreement in respect of the provision of regulated activities. They must inform that person, in writing, of the agreed terms and 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) the scope of 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;

- (h) a statement that the licensee is licensed by the Commission; and
- (i) the terms upon which client money is held.

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 their complaint including details of any actions being taken to resolve their complaint;
 - (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 a licensed fiduciary has provided a full response to a complaint, or a significant complaint, the complaint shall be closed after the expiry of four weeks from the date of the response, unless and until the licensed fiduciary receives notice that the response is unsatisfactory.
- (3) Where the status of the complaint is closed, the licensed fiduciary should ensure that the records contain sufficient information in the event that the matter is reopened. Information should include –
- (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 professional indemnity insurance (“PII”) cover which is commensurate with the size and nature of its business.
- (2) The minimum indemnity limit for any one claim, or for aggregate claims, must be the greater of –
 - (a) three times turnover from regulated activities; or
 - (b) £1,000,000where the turnover from regulated activities shall be taken from the previous year’s audited financial statements or, for new businesses, estimated turnover for the first year.
- (3) Any excess must not exceed 3% of turnover from regulated activities.
- (4) For a licensed fiduciary, which holds a full fiduciary license, the Commission will consider arrangements under group policies or, where its parent or ultimate parent is of sufficient stature, for self-insurance.
- (5) PII policies must include cover against –
 - (a) negligence, errors or omissions by the licensed fiduciary;
 - (b) any liability for the dishonest acts of employees which may fall on a full fiduciary licence holder;
 - (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 carries on business.

- (5) 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.
- (6) 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 their Client.

4.2 Financial resources

4.2.1 Application

- (1) Rule 4.2 applies to full fiduciary licence holders unless 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.

Expenditure is calculated as 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 part of the annual expenditure.

- (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.

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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 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 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 Full Fiduciary 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 treated as an additional liability when calculating current liabilities for the purposes of 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

Current Assets	x
Less: Illiquid Assets	<u>(x)</u>
A [Adjusted Current Assets]	x
Less: Current Liabilities	(x)
PI Insurance Excess	<u>(x)</u>
B [Liquid Assets]	x
Add: Any Qualifying Items	x
C [Liquid Assets (as adjusted)]	<u><u>x</u></u>
Percentage of Liquid Assets to Annual Expenditure	x
Liquidity Requirements	<u>(x)</u>
Liquidity Requirement Excess	<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 they 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 demonstrable consideration of the financial position and actions taken by the Board or partners of the licensed fiduciary.

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PART 5 – COOPERATION WITH THE COMMISSION

5.1 General provision

- (1) A licensed fiduciary must deal openly and honestly 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 fourteen 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 Fiduciary Handbook;
 - (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) of the appointment of anyone acting under any regulatory authority to investigate the affairs of the licensed fiduciary, its holding company or subsidiary;
- (g) of the imposition of disciplinary measures, or sanctions, against the licensed fiduciary, its holding company or subsidiary, by any regulatory authority;
- (h) of 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 regards to outsourcing –
 - (i) any significant outsourcing arrangements entered into; and
 - (ii) any material changes to significant outsourcing arrangements; and
 - (iii) where there is a failure of service provider or other breakdown in the provision of outsourced services, which causes significant disruption to the licensed fiduciary's business;
- (j) with regards to PII –
 - (i) when a notification under a PII is made to its insurer; or
 - (ii) if there is any payment made, by the insurers, under the PII cover;
- (k) with regards 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;
 - (iii) when a complaint is upheld by the Channel Islands Financial Ombudsman; or

- (iv) when a complaint is upheld by the Office of the Data Protection Authority;
- (l) any notification of breaches made to the Office of the Data Protection Authority by the licensee;
- (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; and
- (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;

Notifications made under (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 section 46(2) or any provision of the Law.

PART 6 – GENERAL PROVISION

6.1 Interpretation

- (1) In this Handbook terms have their ordinary meaning unless specifically defined in the Law or in the rules within this Handbook.
- (2) In this Handbook the following definitions should be followed -

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

“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;

“Approved Bank” means an institution which is -

- (a) licensed under the Banking Supervision (Bailiwick of Guernsey) Law 1994¹⁹;
- (b) registered under the Banking Business (Jersey) Law 1991²⁰;
- (c) licensed under the Isle of Man Financial Services Act 2008²¹ to carry on a regulated activity of falling within Class 1 (deposit-taking businesses);
- (d) authorised under the Financial Service and Markets Act 2000²² of the United Kingdom to carry on the regulated activity of deposit taking;

¹⁹ Ordres en Conseil No. XIII of 1994, as amended.

²⁰ Chapter 13.075.

²¹ AT 8 of 2008.

²² 2000 c. 8.

- (e) a building society, registered and incorporated under the Building Societies Act 1986²³ 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;
- (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, 2008²⁴, as amended or, in the case of an unincorporated entity, the committee or managing board of a partnership or other similar governing body;

“**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;

²³ 1986 c. 83.

²⁴ Order In Council No. VIII of 2008, as amended.

“Client Company” means a body to or for which a Company Service Provider (“CSP”) has agreed to provide services constituting company administrative business;

“Client Money” means money which -

(a) is held or is received on behalf of a client; or

(b) is owed to a client whether or not immediately due or payable;

“company administration business” means the activities described in section 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 section 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 official” has the meaning given to it under section 2(1)(d) of the Law;

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

“the AML Handbook” means the Handbook in Countering Financial Crime and Terrorist Financing, as amended from time to time;

“the Law” means The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law 2000²⁵, as amended from time to time;

“Pension Business” means the activities described in section 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;

“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 Clients information;

“trust business” means the activities described in section 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.

²⁵ No. 1 of 2001 (Ordres en Conseil Vol. XLI, p. 13) as amended.

- (3) The Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016²⁶ applies to the interpretation of the Fiduciary Handbook.
- (4) A reference in the Fiduciary Handbook to an enactment should be taken to include any amendments, re-enactments (with or without modification), extensions and applications.

6.2 Citation and commencement

- (1) The Fiduciary Handbook and the rules made therein shall come into operation on **** and may be cited as the Fiduciary Handbook 20XX.

²⁶ Order in Council No. V of 2018, as amended.

PART 7 – TRANSITIONAL ARRANGEMENTS, REVOCATIONS AND AMENDMENTS

7.1. Transitional arrangements

- (1) Licensees must complete amendments to their internal controls to ensure compliance with this Handbook by *********.

7.2. Savings

7.3. Revocations

7.3.1 Revocation of The Regulation of Fiduciaries (Accounts) Rules, 2001

The Regulation of Fiduciaries (Accounts) Rules, 2001, as amended, are revoked.

7.3.2 Revocation of The Financial Resources Requirements Rules, 2018

The Financial Resources Requirements Rules, 2018, as amended, are revoked.

Dated this

C.A. SCHRAUWERS
Chairman of the Guernsey Financial Services Commission
For and on behalf of the Commission