

## Guernsey Statutory Instrument

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2001 No 14

### The Regulation of Fiduciaries (Accounts) Rules, 2001<sup>a</sup>

[consolidated text]

This consolidated version of the Rules incorporates amendments made by The Regulation of Fiduciaries (Accounts) Rules, 2010. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house. No warranty is given that the text is free of errors and omissions and no liability is accepted for any loss arising from its use.

Made: 20 March 2001

Coming into operation: 1 April 2001

**THE GUERNSEY FINANCIAL SERVICES COMMISSION**, in exercise of the powers conferred on it by sections 29 and 61 of The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000<sup>b</sup>, hereby makes the following Rules:

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<sup>a</sup> Amended by The Regulation of Fiduciaries (Accounts) (Amendment) Rules, 2010

<sup>b</sup> Order in Council No. 1 of 2001.

*Citation and commencement*

- 1 These Rules may be cited as The Regulation of Fiduciaries (Accounts) Rules, 2001 and shall come into force on 1<sup>st</sup> April, 2001.

*Interpretation*

- 2 In these Rules:

“Auditor” means a person who is qualified for appointment as an auditor by virtue of section 63(1)(a) or (b) or section 63(6) (read in conjunction with any Ordinance made thereunder) of The Companies (Guernsey) Law, 1994 and who is approved by the Commission to audit the accounts of licensed fiduciaries,

“Commission” means the Guernsey Financial Services Commission established by The Financial Services Commission (Bailiwick of Guernsey) Law, 1987,

“Financial statements” means financial statements of a licensed fiduciary which comply with the requirements of Rule 7,

“Full fiduciary licence” means a fiduciary licence granted by the Commission of the category described in section 4(1)(a) of the Law,

“Law” means The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,

“Licensed fiduciary” means a person who holds a full fiduciary licence or a personal fiduciary licence,

“Personal fiduciary licence” means a fiduciary licence granted by the Commission of the category described in section 4(1)(b) of the Law,

“Regulated activity” means an activity described in section 2 of the Law, carried on by way of business,

“Regulatory Laws”<sup>b</sup> means:

- (a) The Protection of Investors (Bailiwick of Guernsey) Law, 1987.
- (b) The Banking Supervision (Bailiwick of Guernsey) Law, 1994.
- (c) The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000.
- (d) The Insurance Business (Bailiwick of Guernsey) Law, 2006.
- (e) The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2007.

and, unless the context otherwise requires, references to an enactment, or to a Rule or Regulation made under an enactment, are references thereto as amended, re-enacted (with or without modification), extended or applied.

#### *Application of these Rules*

- 3(1) Rules 4 and 5 apply to all persons who are licensed fiduciaries.
- (2) Rule 6 applies to a person who holds a personal fiduciary licence.
- (3) Rules 7 to 11 inclusive apply to a person who holds a full fiduciary licence.

#### **All licensed fiduciaries**

#### *Accounting period*

- 4(1) A licensed fiduciary’s accounting period shall not exceed 12 months unless the Commission approves in writing a longer period.
- (2) A licensed fiduciary shall not change his accounting period without the Commission’s prior written consent.

### *Accounting records*

- 5(1) A licensed fiduciary shall keep accounting records which:
- (a) if he holds a personal fiduciary licence, show and explain each of his transactions in relation to regulated activities carried on by him and enable financial statements to be prepared in relation to those activities, or
  - (b) if he holds a full fiduciary licence, show and explain each of his transactions and enable financial statements to be prepared in relation to him.
- (2) A licensed fiduciary's accounting records must be capable of disclosing with reasonable accuracy at any time his assets, liabilities, income and expenditure or, if he holds a personal fiduciary licence, his assets, liabilities, income and expenditure so far as they relate to regulated activities carried on by him.
- (3) A licensed fiduciary shall keep (in such manner that they can be reproduced in legible form) the accounting records maintained in accordance with Rule 5(1) or copies of them (whether in electronic or any other form) for a period of at least six years from the dates on which they were made.

### **Licensed fiduciaries holding personal fiduciary licences**

#### *Particulars of financial position relating to regulated activities*

- 6(1) A person shall, subject to the provisions of Rule 6(2), provide to the Commission particulars of his financial position in relation to each accounting period at any time during which he held a personal fiduciary licence.
- (2) The particulars provided under Rule 6(1) may be limited to a licensed fiduciary's financial position so far as it relates to regulated activities carried

on by him during the relevant accounting period and need not be in the form of financial statements.

- (3) The particulars required by Rule 6(1) shall be provided to the Commission within four months of the end of the accounting period to which they relate.

### **Licensed fiduciaries holding full fiduciary licences**

#### *Preparation of financial statements*

- 7(1) A person shall prepare financial statements for each accounting period at any time during which he held a full fiduciary licence.
- (2) Unless the Commission agrees otherwise, financial statements shall be prepared in accordance with United Kingdom Accounting Standards issued by the Accounting Standards Board, with United States Accounting Standards issued by the Financial Accounting Standards Board, or with International Accounting Standards issued by the International Accounting Standards Committee.
- (3) The financial statements of a licensed fiduciary may (subject to any other requirement which applies to those statements) be aggregated with those of one or more other licensed fiduciaries which are named on the same fiduciary licence as the first licensed fiduciary.
- (4) The financial statements shall show a true and fair view of:
  - (a) the state of affairs of the licensed fiduciary or fiduciaries at the end of the relevant accounting period, and
  - (b) its or their profit or loss for that period.

*Appointment of auditor*

- 8 A licensed fiduciary which holds a full fiduciary licence shall appoint an auditor and, if any vacancy in the office arises, replace its auditor.

*Auditors' reports*

- 9 An auditor's report on the financial statements of a licensed fiduciary and the audit leading to that report shall be prepared or conducted in accordance with Auditing Standards issued by the Auditing Practices Board.

*Provision of financial statements and auditors' management letters to the Commission*

- 10(1) A person shall provide to the Commission financial statements for each accounting period at any time during which it held a full fiduciary licence.
- (2) Unless a person is licensed under one of the Regulatory Laws other than The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, and the Commission has confirmed in writing that the requirements of or made under the Law in relation to the submission of financial statements take precedence over the licensee's obligations under these Rules, the statements shall be provided to the Commission within four months of the end of the accounting period to which they relate.
- (3) The financial statements shall be accompanied by:
- (a) an auditor's report on the financial statements,
  - (b) any report prepared by an internal or external auditor which is available to the licensed fiduciary and addresses a relevant matter, and
  - (c) brief details of any report prepared by an accountant or consultant which is available to the licensed fiduciary and addresses a relevant matter.

- (4) In Rule 10(3)(b) and (c) “relevant matter” means a breakdown or material weakness in a licensed fiduciary’s internal control procedures.
- (5) A licensed fiduciary shall forthwith provide to the Commission a copy of any management letter received from his external auditor.

*[ Transitional provision for provision of financial statements to the Commission ]*

11(1) *[ Revoked ]*<sup>a</sup>

(2) *[ Revoked ]*<sup>a</sup>

Dated this 20<sup>th</sup> day of March, 2001.

L. C. Morgan

Chairman of the Guernsey Financial Services Commission

for and on behalf of the Commission

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EXPLANATORY NOTE

(This note is not part of the Rules)

The purpose of these Rules is to require licensed fiduciaries to keep adequate accounting records, to provide details of their financial positions to the Commission and, in the case of those holding a full fiduciary licence, to prepare audited financial statements. By Rule 6(2), all that a person holding a personal fiduciary licence need provide to the Commission is details of income derived from regulated activities and not any other unrelated income.