

Guernsey Statutory Instrument

2004 No.51

The Regulation of Fiduciaries (Fees) Regulations, 2004

Made: 7th December 2004

Coming into operation: 1st January 2005

THE GUERNSEY FINANCIAL SERVICES COMMISSION, in exercise of the powers conferred on it by section 13 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^a and by sections 7, 38 and 61 of The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000^b, and after consultation with the Policy Council of the States of Guernsey, the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark, hereby makes the following Regulations:

Citation and commencement

- 1 These Regulations may be cited as The Regulation of Fiduciaries (Fees) Regulations, 2004 and shall come into force on 1st January 2005.

Interpretation

- 2 In these Regulations:

“Accounts Rules” means The Regulation of Fiduciaries (Accounts) Rules, 2001,

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

^a Ordres en Conseil Vol. XXX, p243.

^b Order in Council No. 1 of 2001.

“Controller” has the meaning given by section 58(1) of the Law,

“Financial statements” means financial statements which comply with the requirements of Rule 7 of the Accounts Rules,

“Fiduciary turnover” has the meaning given by Regulation 4(6),

“Fiduciary licence” means a full fiduciary licence or a personal fiduciary licence,

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

“Joint application” means an application of the type described in Regulation 3(3),

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

“Personal fiduciary licence” means a 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, when carried on by way of business,

“Relevant accounting period” has the meaning given by Regulation 4(5),

“Relevant annual fee” means the fee payable by a person by virtue of Regulation 4(7),

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

Fee payable on application for a fiduciary licence

Application for a personal fiduciary licence

- 3(1) Subject to Regulation 5(3), a person who applies for a personal fiduciary licence shall, on making the application, pay a fee of £565.

Application for a full fiduciary licence

- 3(2) Subject to Regulations 3(4) and 5(3), a person who applies for a full fiduciary licence shall, on making the application, pay a fee of £1,125.

- 3(3) Where applications for full fiduciary licences are submitted jointly by:

- (a) companies which are associated companies (as defined in section 23(5)(a) of the Law),

- (b) a partnership and one or more companies of which a partner in that partnership is a controller, or
- (c) any other combination of persons or unincorporated bodies permitted by the Commission to make a joint application

the applicants shall nominate one of their number as lead applicant.

- 3(4) Where a joint application is made, the lead applicant shall, on making the application and subject to Regulation 5(3), pay a fee of £1,125 and a further £112.50 for each applicant other than the lead applicant.

Fee payable on grant or renewal of a fiduciary licence

Grant of a personal fiduciary licence

- 4(1) A person to whom the Commission decides to grant a personal fiduciary licence shall pay a fee as follows:
- (a) if the Commission had received his application before 1st June 2001 and decides to grant a fiduciary licence before 1st July 2005, £41.67 for each calendar month between 1st April 2001 and 30th June 2003 plus £43 for each calendar month between 1st July 2003 and 30th June 2004 plus £45 for each calendar month between 1st July 2004 and 30th June 2005,
 - (b) if the Commission had received his application before 1st June 2001 and decides to grant a fiduciary licence after 30th June 2005, £41.67 for each calendar month between 1st April 2001 and 30th June 2003 plus £43 for each calendar month between 1st July 2003 and 30th June 2004 plus £45 for each calendar month between 1st July 2004 and 30th June 2005 plus £47.50 for each calendar month between 1st July 2005 and 30 June next following that decision,
 - (c) in any other case in which the Commission decides before 1st July 2005 to grant a personal fiduciary licence, £45 for each calendar month or part of a calendar month between the Commission's decision to grant the licence and 30th June 2005, and
 - (d) in any other case, £47.50 for each calendar month or part of a calendar month between the Commission's decision to grant the licence and 30th June next following that decision.
- 4(2) A fee payable under Regulation 4(1) is due immediately upon the Commission notifying the applicant of its decision to grant a personal fiduciary licence.

Renewal of a personal fiduciary licence

- 4(3) A person seeking the renewal of his personal fiduciary licence shall pay a fee of £565.
- 4(4) A fee payable under Regulation 4(3) is due by 31st May for the year commencing on 1st July in the same calendar year.

Grant of a full fiduciary licence

- 4(5) "Relevant accounting period" means a person's last accounting period ending at or before the end of December in the year preceding that in which the relevant annual fee is due or, in the case of a person not yet carrying on any regulated activity, the first accounting period in which he will do so.
- 4(6) "Fiduciary turnover" means:
- (a) the figure, if any, shown in a person's audited financial statements as being the gross turnover from his regulated activities in the relevant accounting period or, if none,
 - (b) the figure, if any, certified by his auditor to the Commission as being the gross turnover from his regulated activities in the relevant accounting period or, if none,
 - (c) the figure shown in his audited financial statements as being his gross turnover in the relevant accounting period or,
 - (d) in the case of a person not obliged to produce audited financial statements for the relevant accounting period or not yet carrying on any regulated activity, the figure agreed between him and the Commission as an estimate of his gross turnover from regulated activities in the relevant accounting period

provided that:

- (i) if the relevant accounting period was not a period of twelve months, the person's fiduciary turnover shall be his fiduciary turnover determined as above divided by the number of months (including any part of a month) in the relevant accounting period and multiplied by twelve, and
 - (ii) if the person made a joint application, the gross turnover, or gross turnover from regulated activities, of that person and of any other persons with whom he made and remains eligible to make a joint application shall, for the purposes of this Regulation, be the aggregate gross turnover, or as applicable the aggregate gross turnover from regulated activities, of all of those persons.
- 4(7) "Relevant annual fee" means:
- (a) in relation to any period before 1st July 2003:

£10,500 unless the person by whom it is payable demonstrates to the Commission before the fee becomes due that his fiduciary turnover:

- (i) is less than £250,000, in which case the relevant annual fee is £2,500,
- (ii) is equal to, or more than, £250,000 but less than £1,000,000, in which case the relevant annual fee is £5,000;

- (b) in relation to any period after 30th June 2003 but before 1st July 2004:

£14,500 unless the person by whom it is payable demonstrates to the Commission before the fee becomes due that his fiduciary turnover:

- (i) is less than £250,000, in which case the relevant annual fee is £2,575,
- (ii) is equal to, or more than, £250,000 but less than £1,000,000, in which case the relevant annual fee is £5,150, or
- (iii) is equal to, or more than, £1,000,000 but less than £2,000,000, in which case the relevant annual fee is £12,500;

- (c) in relation to any period after 30th June 2004 but before 1st July 2005:

£15,080 unless the person by whom it is payable demonstrates to the Commission (before the fee becomes due or, if it is due on the renewal of a fiduciary licence, at least two calendar months before it becomes due) that his fiduciary turnover:

- (i) is less than £250,000, in which case the relevant annual fee is £2,678,
- (ii) is equal to, or more than, £250,000 but less than £1,000,000, in which case the relevant annual fee is £5,356, or
- (iii) is equal to, or more than, £1,000,000 but less than £2,000,000, in which case the relevant annual fee is £13,000;

- (d) in relation to any period after 30th June 2005:

£15,805 unless the the person by whom it is payable demonstrates to the Commission (before the fee becomes due or, if it is due on the renewal of a fiduciary licence, at least two calendar months before it becomes due) that his fiduciary turnover:

- (i) is less than £250,000, in which case the relevant annual fee is £2,810,

- (ii) is equal to, or more than, £250,000 but less than £1,000,000, in which case the relevant annual fee is £5,615, or
- (iii) is equal to, or more than, £1,000,000 but not more than £2,000,000, in which case the relevant annual fee is £13,625.

4(8) A person to whom the Commission decides to grant a full fiduciary licence shall pay a fee as follows:

- (a) if the Commission had received his application for a licence before 1st June 2001, one twelfth of the relevant annual fee for each calendar month between 1st April 2001 and 30th June next following the Commission's decision to grant the licence, or
- (b) in any other case, one twelfth of the relevant annual fee for each calendar month or part of a calendar month between the Commission's decision to grant the licence and 30th June next following that decision.

4(9) A fee payable under Regulation 4(8) is due immediately upon the Commission notifying the applicant of its decision to grant a full fiduciary licence.

4(10) Where the Commission decides to grant a full fiduciary licence following a joint application, all persons who will be named on that licence shall be jointly and severally liable for the fee payable under Regulation 4(8).

Renewal of a full fiduciary licence

4(11) A person seeking the renewal of his full fiduciary licence shall pay the relevant annual fee by 31st May for the year commencing on 1st July in the same calendar year.

4(12) All persons who will be named on the renewal of a full fiduciary licence shall be jointly and severally liable for the fee payable for that renewal.

Fee payable on application for discretionary exemption from fiduciary regulation

Application by individual

5(1) An individual who applies under section 3(1)(y) of the Law for an exemption shall, on making the application, pay a fee of £280.

Application by company or partnership

5(2) A company or partnership which applies under section 3(1)(y) of the Law for an exemption shall, on making the application, pay a fee of £565.

Fee for unsuccessful application for discretionary exemption to be set off against subsequent fiduciary licence application fee

- 5(3) If the Commission notifies a person who has made an application for any exemption under section 3(1)(y) of the Law that his application has been unsuccessful and, within three months of that notification, he applies for a fiduciary licence, the fee paid under this Regulation shall be set off against the fee payable under Regulation 3.

Fee payable on application for consent to use certain names or descriptions

- 6 A person applying to the Commission for its permission under section 38 of the Law to use a name or description set out in section 36 of the Law shall, on making the application, pay a fee of £1,125.

Interest

- 7 If any fee due under these Regulations is not paid when it is due, the Commission shall without prejudice to any other remedy in respect of the non-payment be entitled to the payment of interest calculated on that fee at the rate of 10% per annum from the date on which payment became due to that on which payment was made.

Repeal

- 8 The Regulation of Fiduciaries (Fees) Regulations, 2003^c are repealed.



Dated this 7th day of December, 2004.

J. E. Hallam
Chairman of the Guernsey Financial Services Commission
For and on behalf of the Commission

^c G.S.I. 2003 No. 33.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the fees which are payable to the Commission on an application for or the renewal of a fiduciary licence and for other applications under The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000.
