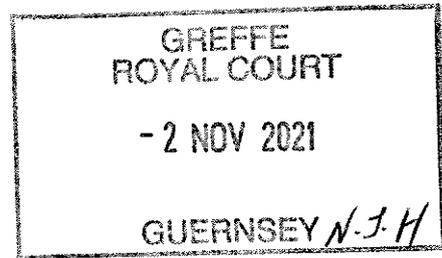


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THE INSURANCE INTERMEDIARIES RULES, 2021

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The Guernsey Financial Services Commission (“the Commission”), in exercise of the powers conferred on it by sections 3, 18, 20, 61 and 62 of The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law 2002¹ (“the Law”) makes the following Rules.

¹ Order In Council No. XXII of 2002.

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PART 1 INTRODUCTION

1.1 Application

- (1) The Insurance Intermediaries Rules, 2021 replaces The Insurance Managers and Intermediaries (Licensing) Regulations, 2002², The Insurance Managers and Insurance Intermediaries (Client Monies) Regulations, 2008³, The Insurance Managers and Intermediaries (Annual Returns) Regulations, 2008⁴, The Insurance Intermediaries and Insurance Managers (Approved Assets) Regulations, 2008⁵ and The Insurance Intermediaries (Conduct of Business) Rules, 2014⁶.
- (2) The Commission may in its absolute discretion, by written notice to a licensee, exclude or modify the application of any provision of these Rules.
- (3) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.

² G.S.I. No. 40 of 2002.

³ G.S.I. No. 19 of 2008.

⁴ G.S.I. No. 18 of 2008.

⁵ G.S.I. No. 17 of 2008.

⁶ G.S.I. No. 97 of 2014.

PART 2 LICENSING

2.1 Application for licence

- (1) An application for an insurance intermediary's licence, under the Law, must include the following –
 - (a) the appropriate application form, fully completed;
 - (b) the application fee;
 - (c) details of ownership, including –
 - (i) sufficient information to confirm the ultimate ownership of the proposed applicant;
 - (ii) sufficient information to confirm the proposed applicant's controllers;
 - (iii) a list of the applicant's current shareholders and proposed shareholders on licensing, if different;
 - (iv) an organisation chart sufficient in detail to identify all holdings between the company and its ultimate holding company;
 - (v) the latest audited financial statements of the applicant and ultimate holding company and controller, where different;
 - (vi) an outline of the background of the ultimate holding company and controller, where different;
 - (d) where a trust is involved in the ownership chain –

- (i) a copy of the trust deed;
 - (ii) the names and current addresses of the beneficiaries;
 - (iii) the names and current addresses of the settlors;
 - (iv) the names and current addresses of the trustees;
 - (v) the relationship of the settlors to the beneficiaries;
- (e) the proposed method of capitalisation, whether by way of share capital, letter of credit, subordinated loans, or otherwise; and
- (f) such other information as the Commission may require.
- (2) The application must include a business plan stating –
- (a) financial projections, covering at least the first three years of operations of the applicant following licensing;
 - (b) the rationale for setting up the company in the Bailiwick;
 - (c) a list of insurance companies intended to be used by an insurance intermediary applicant in the next twelve months; and
 - (d) details of any other forms of business to be undertaken.
- (3) The application must include information required in respect of the applicant's personnel and third party service providers including, as appropriate –
- (a) the names and addresses of the current and proposed –
 - (i) directors;
 - (ii) officers;

- (iii) managers;
 - (iv) general representative;
 - (v) consultants;
 - (vi) Money Laundering Reporting Officer; and
 - (vii) compliance officer.
- (b) for all current and proposed directors, and general representatives, a Personal Questionnaire, in the standard format determined by the Commission, or a statement from the current or proposed director or general representative confirming that the Personal Questionnaire already held by the Commission is correct;
 - (c) the name, address, date of birth, qualifications, and employment history of insurance representatives to be authorised by the applicant;
 - (d) a copy of the auditors' acceptance to act as auditor of the applicant;
 - (e) details of any other third party service providers.
- (4) Where appropriate, the application must include the memorandum and articles of association.
 - (5) Where appropriate, the application must include the certificate of incorporation.
 - (6) Unless previously agreed in writing with the Commission the application must also include –
 - (a) the amount of, and limitations including exclusions and geographical limitations, of PI cover;
 - (b) a copy of the client monies handling procedure;

- (c) the details of the bank mandate signing powers;
- (d) confirmation that share capital has been received; and
- (e) confirmation as to the origin of sources of funds to support the operations of the applicant.

2.2 Business from sensitive jurisdictions

- (1) Additional information, to be individually determined by the Commission, may be required where the applicant, potential clients, controller, or ultimate holding company is resident in a sensitive jurisdiction, as published on the Commission's website.

2.3 Exempt persons

- (1) For the purposes of the Law, the following persons are exempt from the requirement to be registered as an insurance intermediary –
 - (a) those persons advising on policies of insurance as part of a contract to provide goods or services, including –
 - (i) the selling of an extended warranty insurance product where that product is sold as part of an exclusive arrangement originated by the product manufacturer and in conjunction with the purchase of goods;
 - (ii) the selling of a travel insurance product where that product is sold as part of an exclusive arrangement originated by the tour operator and in conjunction with the purchase of a holiday package arrangement, either directly or through a travel agent; and

- (iii) the selling of a credit protection insurance where such insurance is sold unconditionally as part of an agreement when providing loan or overdraft facilities, other than mortgage protection, where the provider is not promoting any other insurance service to its customer base;
 - (b) those persons providing fiscal advice which does not include advising on the choice of the insurance product provider; and
 - (c) licensed insurance managers who advise large clients and not the general public.
- (2) For the purposes of (1)(c), a “large client” means a client which has at least 50 employees or more than £500,000 net turnover in its last completed financial year.

PART 3 ANNUAL RETURNS

3.1 Licensed insurance intermediary's annual return

- (1) The annual return of a licensed insurance intermediary must comprise of the following –
 - (a) a copy of the auditor's management letter or confirmation that no auditor's management letter has been, or will be, issued; but where the management letter is not available at the time of the annual return, it must be submitted as soon as practicable;
 - (b) a copy of any internal audit report issued during the year;
 - (c) an up-to-date list of all authorised insurance representatives, together with details of current qualifications;
 - (d) a copy of the cover note evidencing renewal of professional indemnity cover, on expiring terms or otherwise, including details of any exclusions and geographical limitations;
 - (e) a statement of all insurers with whom the intermediary has placed business in the financial year in question;
 - (f) an up-to-date business plan including both financial projections and narrative explanation;

- (g) confirmation that all material changes to personal questionnaire forms have been notified to the Commission;
- (h) details of all overseas regulatory licences, authorisations, or permissions, indicating the issuing authority and the date of issuance;
- (i) details of any third-party arrangements entered into for the outsourcing of business or the administration of activities, including delegated activities, required by or in respect of licensed activities in accordance with the Law; and details of any third party arrangements;
- (j) details of premium and turnover split, by product type and geographical location of clients, between –
 - (i) the Bailiwick;
 - (ii) the Isle of Man and the Bailiwick of Jersey;
 - (iii) the United Kingdom;
 - (iv) European Union countries, including EEA States;
 - (v) the United States of America and Canada; and
 - (vi) the rest of the world;
- (k) confirmation of compliance, throughout the period covered by the annual return, with –
 - (i) the Law, and any subordinate legislation made under it;
 - (ii) all applicable rules and codes issued under the Law;
- (l) if the intermediary is unable to give the confirmation set out at (l), details of any applicable breaches and what action, if any, has already been taken to remedy any applicable breaches; and

- (m) confirmation that the accounts have been prepared and deposited in accordance with the Law.

- (2) The Commission are entitled to require that an intermediary periodically provides further specific information in their Annual Returns which is not set out in these Rules.

3.2 Annual returns in non-standard format

- (1) Where the Commission has, in any particular case, given written confirmation that a format other than the standard format of an annual return may be used, that format will suffice.

PART 4 CLIENT MONIES

4.1 Application

(1) Unless otherwise agreed by the Commission in writing, this Part applies to –

- (a) insurance intermediaries; and
- (b) licensed insurance managers when acting as insurance intermediaries,

who hold client money.

4.2 Client monies

(1) In the course of carrying out its business an insurance intermediary may –

- (a) receive and hold money from premiums, from a client, that the insurance intermediary will transfer to an insurer; and
- (b) receive claims money or refunded premiums, from an insurer, for onward payment to the client

and, in this Part, such money is referred to as “client monies”.

(2) Client monies must not include monies which are “monies held at the risk of insurers” which include –

- (a) monies held as agent for the insurer to the extent that such monies are treated as being received by the insurer when they have been received by the insurance intermediary; and

- (b) claims and premium refunds which are only treated as being received by the client when they are paid over to the client.

4.3 Client accounts

- (1) An insurance intermediary must –
 - (a) open and maintain a separate bank account, a “client account”, for client money; and
 - (b) ensure that this account is clearly separate and distinguishable from its own bank accounts.
- (2) Unless otherwise agreed by the Commission, in writing, a client account must be held in a bank or building society licensed by the appropriate regulatory authority in the Bailiwick.
- (3) An insurance intermediary must take all necessary measures to protect clients against the risk that it may be unable to transfer –
 - (a) premiums to an insurer; or
 - (b) claims monies or premium refunds to the client.
- (4) An insurance intermediary must not hold money, other than client money, in a client account unless such other money is –
 - (a) a minimum sum required to open the account;
 - (b) necessary to keep it open;
 - (c) interest credited to the account which exceeds the amount due to clients as interest, which had not yet been withdrawn by the insurance intermediary;
 - (d) commission due to the intermediary; or

- (e) money credited to the client account to make good any shortfall as set out in this rule.
- (5) Client money must be paid into the client bank account no later than the next business day after receipt but where it is not so paid in –
- (a) it must be paid into the client bank account as soon as possible after the omission has been discovered;
 - (b) the reason for the failure must be recorded and held on the client file; and
 - (c) where the money is not paid in within three business days of being received, the relevant client must be informed.
- (6) An insurance intermediary must ensure that –
- (a) the total amount of client money held for each client in any client account is positive; and
 - (b) no payment is made from any such account for the benefit of a client unless –
 - (i) the client has provided the insurance intermediary with sufficient cleared funds to enable a premium payment to be made; or
 - (ii) the insurer has provided the intermediary with sufficient cleared funds to pay a claim or refund of premium.
- (7) Where client money is received by the insurance intermediary in the form of an automated transfer, the insurance intermediary must –
- (a) take reasonable steps to ensure that the money is received directly into the client account; and

- (b) if money is received directly into the insurance intermediary's own account, transfer the money into the client account no later than the next business day after receipt.
- (8) An intermediary may withdraw commission from the client account where –
 - (a) it has received the premium from the client, and
 - (b) such a withdrawal is in accordance with this Part.
- (9) Where premiums are paid to the insurer, net of any commission due to the insurance intermediary, the insurance intermediary must not transfer that commission into its own account until the premium is paid to the insurer.

4.4 Terms and conditions

- (1) An insurance intermediary must disclose to its clients that –
 - (a) it holds client money in a segregated account;
 - (b) any monies which it may hold are to be designated as monies held at the risk of insurers.
- (2) An insurance intermediary must enter into a terms of business agreement (a "TOBA"), with each of its clients, which sets out the terms and conditions relating to the handling of money contained in client accounts; including the treatment of interest accruing on client money.

4.5 Interest earned

- (1) A TOBA, between an insurance intermediary and its clients, must clearly explain, and where necessary obtain the client's express consent to, the intermediary retaining any interest accruing on client money.

- (2) If the insurance intermediary has reasonable grounds to believe that the interest earned for an individual client will be no more than £20 per transaction, it need not obtain the client's consent to it retaining any interest.

4.6 Reconciliations

- (1) Where an insurance intermediary holds clients' money, it must carry out a cash-based, or accruals-based, reconciliation of the amounts held in its client account, against the amounts which should be held for clients, at least every 25 business days.
- (2) Where a reconciliation is carried out, an insurance intermediary must –
 - (a) match the total monies in its client account by reference to individual clients; and
 - (b) maintain documentary evidence that a reconciliation –
 - (i) has been conducted; and
 - (ii) has undergone an internal peer review by an appropriate person.
- (3) When any discrepancy arises as a result of a reconciliation being carried out, the insurance intermediary must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the bank providing the statement or confirmation and that of the insurance intermediary.
- (4) If –
 - (a) an insurance intermediary is unable to resolve, satisfactorily, any discrepancy arising from a reconciliation; and
 - (b) its reconciliation indicates that there is a need to have a greater amount of client money credited to the account,

the insurance intermediary must assume, until the matter is resolved, that there is a shortfall of client money and pay its own money into the relevant account to ensure the shortfall is met in full.

4.7 Systems and controls

- (1) For the purposes of handling client money, an insurance intermediary must –
 - (a) have and maintain adequate systems and controls to ensure that it is able to monitor and manage its client money transactions; and
 - (b) ensure that proper records are made and retained for a period of six years.

- (2) The records must –
 - (a) be sufficient to show and explain the transactions and commitments of the insurance intermediary in respect of its client money, and
 - (b) include adequate written procedures and evidence that reconciliations are independently reviewed.

4.8 Notification to the Commission

- (1) An insurance intermediary must –
 - (a) advise the Commission, at the time of its application for licensing, of its intention to hold client monies;
 - (b) notify the Commission, in advance, of any subsequent change to its intention;

- (c) notify the Commission, immediately, if it is unable to, or does not, perform the required reconciliations; and
- (d) notify the Commission, as soon as possible, if it is unable to comply with any of the requirements in this Part.

PART 5 MINIMUM CAPITAL REQUIREMENT

5.1 Minimum Capital Requirement of Licensees

- (1) The Minimum Capital Requirement of a licensed insurance intermediary is £25,000, or 125% of the licensee's professional indemnity insurance deductible or excess, if higher.

5.2 Method of calculation

- (1) The formula used must be the total approved assets minus the total liabilities of the licensee.

PART 6 APPROVED ASSETS

6.1 Approved assets

- (1) Approved assets comprise all those assets held, by the licensee, and valued in accordance with Recognised Accounting Standards less those assets held by the licensee and which are designated as unapproved assets, unless otherwise permitted by the Commission.

6.2 Unapproved assets

- (1) Unapproved assets are –
 - (a) positive goodwill; being the value of a business in excess of the quantified value of its other assets and liabilities;
 - (b) fixtures and fittings; being any furniture or other non-structural items owned by the licensee;
 - (c) computers and information technology equipment, which include any device used for the storage or processing of data electronically;
 - (d) motor vehicles, being any car, truck, motorcycle, or other vehicle that can be used to transport persons or goods and is of a type permitted to travel on public roads; and
 - (e) subject to the Commission directing otherwise, loans to, or other debts owed by, associates, associated parties, or controllers of the licensee.

PART 7 CONDUCT OF BUSINESS

7.1 Corporate governance and senior management responsibility

- (1) The board must ensure that there are effective and appropriate policies, procedures, and controls in place which provide for the board to meet its obligations under the Law and these Rules.
- (2) The board must evaluate and record the assessment of its compliance with the Financial Sector Code of Corporate Governance or any successor codes.
- (3) The board must retain responsibility for the outsourcing of any of its functions.
- (4) The board of an administered licensee remains responsible for the conduct of the administered entity.
- (5) Every licensee, other than a licensee administered by another firm in the Bailiwick, must appoint a chief executive, or equivalent, and appoint a replacement to fill this position when it becomes vacant.
- (6) A licensee's board and senior management must act, and must take all reasonable steps to ensure that all employees of the licensee act, to avoid serious damage to the licensee's reputation or to its financial position.
- (7) Every licensee providing advice to retail clients on long term insurance business must appoint a financial adviser to fulfil this function. A financial adviser is considered an authorised insurance representative.
- (8) It is the responsibility of the board of a licensee to ensure that the activities of a financial adviser are reviewed and managed by a suitably qualified and experienced individual.

7.2 Compliance arrangements

7.2.1 General

- (1) The board has effective responsibility for compliance with the Law, these Rules, and any applicable rules, codes, or guidance.
- (2) The board must take responsibility for the policy on review of compliance and discuss a review of compliance at appropriate intervals.
- (3) The board must ensure that the licensee takes reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and employees act in conformity with –
 - (a) their own, and their employer's, relevant responsibilities under the Law and any applicable rules;
 - (b) the Regulatory Laws;
 - (c) the requirements of the statutory restrictions on market abuse, insider dealing, money laundering, and countering the financing of terrorism;
 - (d) any other applicable legislation;
 - (e) appropriate arrangements on propriety in personal dealings;
 - (f) guidelines issued by the Commission and relevant to the carrying on of insurance intermediary business; and
 - (g) requirements of any self-regulatory organisation or recognised professional body of which the licensee is a member or subject to its regulation,

and the licensee must keep a breaches register to log all instances of non-compliance.

- (4) A licensee must ensure that compliance procedures, in respect of its insurance intermediary business, are set out in writing and that a copy of these are kept at the offices of the licensee and made available, to the Commission, on demand.
- (5) The Commission may require changes to the arrangements and the licensee must implement and comply with these requirements.
- (6) A licensee must review its written compliance procedures at least annually.

7.2.2 The compliance officer

- (1) A licensee must appoint a compliance officer in the Bailiwick to be responsible for compliance and must appoint a replacement to fill this position if it becomes vacant.
- (2) The board must ensure that the compliance officer appointed –
 - (a) be either a natural person or, if a legal person, the Commission must be informed of the natural person who takes responsibility for compliance, within the organisation, as the compliance officer;
 - (b) be resident in the Bailiwick;
 - (c) has sufficient resources to perform their duties;
 - (d) has timely access to all records required under these Rules;
 - (e) receives full co-operation from all staff;
 - (f) reports directly to the board;
 - (g) has regular contact with the board to ensure that the board is able to satisfy itself that all requirements of the Law and these Rules are being met; and

- (h) be fully aware of both their obligations and those of the licensee under the Law and these Rules.
- (3) Where a licensee is considering the outsourcing of compliance functions and providing the compliance officer with additional support from third parties, from elsewhere within the group or externally, then the licensee must –
- (a) ensure that roles, responsibilities, and respective duties are clearly defined and documented; and
 - (b) ensure that the Compliance Officer, other third parties, and employees understand their respective roles, responsibilities, and duties.
- (4) Where the compliance function itself is outsourced to a third party the licensee must advise the Commission of the names of the natural persons employed by the licensee, or its administrator or manager where applicable, responsible for oversight of the outsource.

7.2.3 Compliance monitoring programme

- (1) The board of a licensee must –
- (a) establish such other policies, procedures, and controls as may be appropriate and effective for the purposes of ensuring compliance with these Rules, the Law, and any other applicable rules or codes;
 - (b) establish and maintain an effective policy, for which responsibility must be taken by the board, for the review of its compliance with the requirements of these Rules, the Law, and any other applicable rules or codes and such policy must include provision as to the extent and frequency of such reviews;
 - (c) ensure that a review of its compliance with these Rules is discussed and minuted at a meeting of the board at appropriate intervals, and in considering what is appropriate a licensee must have regard to the risk, taking into account –

- (i) the size, nature, and complexity of the licensee's insurance intermediary business;
 - (ii) its clients, products, and services; and
 - (iii) the ways in which it provides those products and services;
- (d) the board has effective responsibility for compliance with these Rules, the Law, and any other applicable rules and codes. The board must take responsibility for the policy on review of compliance and discuss a review of compliance at appropriate intervals;
- (e) a licensee must evaluate, and record the evaluation of, its compliance with the Finance Sector Code of Corporate Governance or any successor codes;
- (f) a licensee must also ensure that there are effective and appropriate policies, procedures, and controls in place which provide for the board to meet its obligations relating to compliance review, in particular the board must –
- (i) ensure that the compliance review takes into account the size, nature, and complexity of the business and includes a requirement for sample testing of the effectiveness and appropriateness of the policies, procedures, and controls;
 - (ii) consider whether it would be appropriate to maintain a separate internal audit function to assess the adequacy and effectiveness of the area of compliance;
 - (iii) ensure that when a review of compliance is discussed by the board at appropriate intervals the necessary action is taken to remedy any identified deficiencies; and
 - (iv) provide adequate resources either from within the licensee, within the group, or externally to ensure that the compliance policies, procedures, and controls of the licensee are subject to regular monitoring and testing as required by these Rules; and

- (g) the board may delegate some or all of its duties but must retain responsibility.

7.2.4 Employee screening

- (1) A licensee must maintain effective and appropriate procedures, when hiring employees, for the purpose of ensuring high standards of employee probity and competence.
- (2) The board of a licensee is responsible for employee screening.
- (3) For a licensee to ensure that employees are of the required standard of competence and probity, which will depend on the role of the employee, the licensee must –
 - (a) obtain and confirm appropriate references at the time of recruitment;
 - (b) require information from the employee with regard to any regulatory action taken against them;
 - (c) require information, from the employee, with regard to any criminal convictions and the provision of a check of their criminal record, subject to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002⁷;
 - (d) confirm their educational and professional qualifications; and
 - (e) obtain either a valid statement of professional standing from that employee, or evidence that the employee has successfully completed the regulatory module of an acceptable qualification prior to authorisation as a financial adviser.

⁷ <http://www.guernseylegalresources.gg/article/98589/Rehabilitation-of-Offenders-Bailiwick-of-Guernsey-Law-2002-Consolidated-text>.

7.2.5 Employee training

- (1) The board of the licensee is responsible for employee training.
- (2) Every licensee must create and implement a training and competency scheme for all authorised insurance representatives and financial advisers appropriate to the nature and scale of the licensee's business.
- (3) A licensee must ensure that relevant employees receive comprehensive ongoing training to ensure competence for duties including, but not limited to, –
 - (a) the Law, these Rules, and any other applicable rules;
 - (b) the obligations of employees and their potential liability in failing to meet these obligations;
 - (c) the implications of non-compliance by employees with any relevant legislation, rules, and guidance;
 - (d) its policies, procedures, and controls for ensuring compliance with the Law, these Rules, and any other relevant legislation, rules, or guidance.
- (4) The licensee must maintain a training log to record the training that its directors and employees receive.
- (5) The licensee and its board must ensure that each of its financial advisers advising on long term insurance business, and its authorised insurance representatives advising on pure protection products, must hold such qualifications to at least the minimum standard as published by the Commission on its website.
- (6) Where the Commission has specified a time over which a financial adviser must obtain any of the above qualifications, it is the board's responsibility to ensure that this is done.

- (7) Where a financial adviser fails to obtain the relevant qualification the licensee and its board must revoke the financial adviser's authorisation and stop that individual from providing advice to retail clients until such time as the necessary qualifications are obtained.
- (8) A financial adviser must carry out and record a minimum of thirty five hours of continuing professional development per annum; of which a minimum of twenty one hours must be structured.
- (9) A licensee must obtain a statement of professional standing from each financial adviser within three months of the expiry of a valid statement of professional standing. Where a statement of professional standing is not provided to the licensee, by a financial adviser, their authorisation must be revoked until such time as a valid statement of professional standing is provided.

7.3 Accounting records and financial statements

7.3.1 Accounting records

- (1) Every licensee must keep accounting records in English which are sufficient to show and explain its transactions and which –
 - (a) disclose with reasonable accuracy, at any time, the financial position of the licensee at that time; and
 - (b) enable the licensee to demonstrate its continuing compliance with the Minimum Capital Requirement.

7.3.2 Audited financial statements

- (1) Every licensee must prepare audited financial statements covering the period from the immediately preceding accounting reference date or, in the case of a new business, from the date of incorporation, to the next following accounting reference date which must, as a minimum, include –

- (a) accounts complying with generally accepted accounting principles;
and
 - (b) an auditor's report which must include a statement of financial resources certified by the auditor confirming that the appropriate financial resources requirement, specified in the Minimum Capital Requirement, is satisfied.
- (2) Where the licensee is preparing audited financial statements from the period of incorporation to the accounting reference date, audited financial statements must be prepared to the date notified to the Commission at the time of making an application for a licence.
 - (3) Any change in the accounting reference date of a licensee must immediately be notified, to the Commission, with a statement of reasons for the change.

7.3.3 Auditor

- (1) Every licensee must appoint a qualified auditor and confirm, to the Commission, the qualification.
- (2) A licensee must give the Commission written notice of a change of its auditor including a statement of the reasons for the change.

7.4 Conduct of business

7.4.1 Fitness and propriety

- (1) A licensee must observe the Principles in carrying on its insurance intermediary business.
- (2) A licensee must have adequate and effective systems and control in place to ensure that its financial advisers comply with all relevant Codes of Conduct issued by the Commission.

7.4.2 Client relations – client agreements

- (1) Where a licensee provides advice on long term insurance products to a retail client it must do so under a written agreement, signed both by the licensee and client, which sets out, in adequate detail, the basis and terms on which the services are provided and the extent of the discretion to be exercised by the licensee; unless the client specifically advises in writing that he does not require such a written agreement.
- (2) Where a licensee provides advice on general insurance products or pure protection products, it must provide the client with its terms of business in writing.
- (3) If the licensee is to provide intermediary services on an execution-only basis, the basis and terms on which the services are provided must be set out in adequate detail and signed by both the licensee and the client.
- (4) Where a licensee provides long term intermediary services to a professional client or an eligible counterparty, whether on a discretionary basis or otherwise, it must provide that client with the terms on which the licensee is prepared to provide the activities proposed.
- (5) Where it is not practicable for a licensee to provide the information required in (4) before commencing business with the client it must provide it to the client as soon as practicable.

7.4.3 Client relations – suitability

- (1) A licensee, at the outset of its provision of insurance intermediary services to a client, must ensure that it has obtained sufficient knowledge of the client to ensure that any advice is suitable to the requirements of the client.
- (2) A licensee must establish and maintain systems to ensure that its employees do not procure, endeavour to procure, or advise anyone to enter into a transaction if that employee is not competent to advise on that transaction or to assess its suitability for clients.

- (3) A licensee must take reasonable steps to ensure that it does not in the course of its insurance intermediary business, recommend a policy to a client unless the recommendation or transaction is suitable; having regard to the facts obtained by the licensee, the terms of any agreement with that client, and other relevant facts about the client of which the licensee is, or reasonably should be, aware.
- (4) Such records must be retained for a period of six years from the date the relationship ceases.

7.4.4 Client relations – disclosure

- (1) This rule does not apply where a licensee provides intermediary services to a client who is an eligible counterparty.
- (2) Before a licensee provides insurance intermediary services to a client it must disclose to him, in writing, the services, products offered, and the expertise of the licensee.
- (3) A licensee must not recommend a transaction to a client unless it has taken reasonable steps to make them aware of the risks involved, including conflicts of interest.

7.4.5 Client relations – fees, charges, and remuneration

- (1) Before entering into an agreement to provide investment services to a client, a licensee must disclose, to the client in writing, all fees and charges for providing those services, together with the basis of their calculations.
- (2) A licensee must disclose all remuneration to be received in connection with a transaction prior to the execution of the transaction. If the amounts are not known then the basis of the calculation must be provided. This does not apply –
 - (a) to transactions relating to general insurance business, unless the client requests disclosure; or
 - (b) to execution-only business, unless the client requests disclosure.

- (3) Remuneration must be disclosed in a manner appropriate to the category of client to which it relates.

7.4.6 Client relations – periodic information

- (1) This rule does not apply –
 - (a) where a licensee provides long term intermediary services to a client who is an eligible counterparty; or
 - (b) where a client has self-service access to a statement service and has agreed for this rule not to apply.
- (2) A licensee which provides long term intermediary services to a client must forward any valuation reports, issued by the product provider, to the client unless the client advises the licensee, in writing, that they require them less frequently. If the client advises the licensee, in writing, that they do not want to receive a valuation report then the licensee must keep any valuation reports with the clients records.
- (3) Where the licensee has categorised the client as a professional client it may decide not to send out its records.

7.4.7 Client relations – business transfer

- (1) A licensee must obtain the prior written consent of the Commission in respect of any transfer of a block of business, to or from the licensee, where such transfer will occur at the licensee's instigation or with their agreement.

7.4.8 Execution and advising – client order priority

- (1) A licensee must execute client and own account transactions fairly and in due turn. This does not apply where a licensee provides intermediary services to a client who is an eligible counterparty.

7.4.9 Execution and advising – timely execution

- (1) Once a licensee has agreed, with a client, to effect or arrange a transaction it must do so as soon as reasonably practicable. This does not apply where a licensee provides intermediary services to a client who is an eligible counterparty.
- (2) A licensee must document any decision to postpone the execution of a transaction; setting out the reasonable grounds on which such a postponement is believed to be in the best interests of the client.

7.4.10 Promotion and advertising – issue of materials

- (1) The licensee, if responsible for promotion and advertising, must ensure that any materials issued –
 - (a) are clear, fair, and not misleading;
 - (b) do not contain any statement, promise, or forecast which is untrue;
 - (c) are not designed in such a way as to distort or conceal any relevant subject material;
 - (d) are clearly recognisable as an advertisement;
 - (e) are not likely to be misunderstood;
 - (f) where appropriate; state that the investment value is not guaranteed or that the value may fluctuate; and
 - (g) in the case of long term business, –
 - (i) does not employ phrases such as “tax-free” or “tax-paid” without making clear which taxes are being referred to; and

- (ii) does not contain information about past performance unless it contains a warning the past performance is not necessarily a guide to future performance and may not be repeated.

7.4.11 Promotion and advertising – regulatory status

- (1) The regulatory status of the licensee must be included on all communications.

7.4.12 Promotion and advertising – overseas

- (1) A licensee must take all reasonable steps to ensure that any form of promotion or advertising, in a country or territory outside of the Bailiwick, is in accordance with the legislation in force there.

7.5 Record keeping

7.5.1 Records

- (1) A licensee must keep a record of occurrences which have; or have in the opinion of the person responsible for compliance or any client; or may have involved an alleged breach of the Law, and any rules or regulations made under it, and of the steps taken to ensure that such occurrences do not recur.
- (2) All material records and permanent data prepared in order to comply with these Rules must be retained for the duration of the relevant relationship and for a period of at least six years starting from the date that the relevant relationship ceased. For the purpose of this rule, “relationship” includes any direct relationship a licensee has with a client in respect of insurance intermediary business.
- (3) A licensee must keep, and properly maintain, records relating to its insurance intermediary business and any other activities affecting that business, in a form capable of prompt reproduction in English and capable of being checked or audited, to demonstrate compliance with the Law and any regulations and rules made under it.

- (4) A licensee must make records available, for inspection, by the Commission, its employees, and any persons authorised by it within 72 hours in the Bailiwick; although it need not be maintained in the Bailiwick.
- (5) A licensee must review, at least annually, the ease of retrieval of, and condition of, paper and electronically retrievable records including telephone records and recordings.
- (6) Where a policy is cancelled, lapsed, partially, or fully withdrawn, details of it must be maintained for a period of six years from the occurrence, together with an explanation of the reasons for such occurrences, or evidence that such an explanation has been sought.
- (7) All records prepared in order to comply with these Rules must be retained for a period of at least six years from their occurrence. The requirement to retain records for a period of six years is not extinguished by the loss or surrender of the licence or by the licensee ceasing to do business.

7.5.2 Destruction of records or files

- (1) A licensee must ensure that it, and its directors and employees and other persons to the extent that they are under its power and control, must not, without the express consent, in writing, of the Commission amend, destroy, make further entries in, or erase, any record or file which is, or may be, relevant to any matter which is subject of any kind of investigation, disciplinary or other process, or appeal under the Law.

7.6 Categorising clients

7.6.1 General definition

- (1) This rule applies to intermediary licensees advising on long term insurance business and, in this rule –
 - (a) any person with, or for whom, that licensee carries on insurance intermediary business is considered a client of the licensee; and

- (b) a client of an agent is a client of the licensee for whom that agent acts, or intends to act for, in the course of business for which that licensee has accepted responsibility via a contractual arrangement.

7.6.2 Notification to clients

- (1) A licensee must –
 - (a) notify a client of its categorisation as a retail client, professional client, or eligible counterparty; and
 - (b) prior to the provision of services, inform a client about –
 - (i) the effect of this categorisation;
 - (ii) the right that client has to request a different categorisation; and
 - (iii) any limitations to the level of client protection that such a different categorisation would entail.

7.6.3 Retail clients

- (1) A retail client is a client who is not a professional client or an eligible counterparty.

7.6.4 Professional clients

- (1) A *per se* professional client or an elective professional client is a professional client.
- (2) A *per se* professional client is –
 - (a) a large undertaking;

- (b) a professional investor; and
- (c) not a member of the public,

unless it is an eligible counterparty or is allocated a different allocation under these Rules.

- (3) A licensee may treat a client as an elective professional client if the licensee undertakes an adequate assessment of the expertise, experience, and knowledge of the client which gives reasonable assurance that the client is capable of making their own investment decisions in line with the nature of the transactions proposed and the risks involved. Where the client is an entity the assessment must be performed in relation to the person authorised to carry out transactions on its behalf.
- (4) A licensee may treat a client as an elective professional client if the following procedure is followed –
 - (a) the client must state, in writing to the licensee, that it wishes to be treated as a professional client either generally, or in respect of a particular service, or transaction, or type of transaction, or product;
 - (b) the licensee must give the client a clear written warning of the protections and investor compensation rights the client may lose; and
 - (c) the client must state, in writing and in a separate document from the contract, that it is aware of the consequences of losing such protections.
- (5) If a licensee becomes aware that a client no longer meets the initial conditions for categorisation as a professional client, they must take appropriate action.

7.6.5 Eligible counterparties

- (1) A *per se* eligible counterparty or an elective eligible counterparty is an eligible counterparty.
- (2) An eligible counterparty is –
 - (a) any entity licensed for dealing, managing, or advising under the Protection of Investors (Bailiwick of Guernsey) Law, 2020⁸;
 - (b) an approved bank;
 - (c) an insurance company;
 - (d) a collective investment scheme;
 - (e) a pension scheme or its management company;
 - (f) a national government or its corresponding office, including a public body that deals with the public debt;
 - (g) a central bank;
 - (h) a supranational organisation;
 - (i) any other entity that is –
 - (i) incorporated outside the Bailiwick; and
 - (ii) is suitably licensed, authorised, or qualified by legislation in its home jurisdiction.
- (3) A licensee may treat a client as an elective eligible counterparty if –

⁸ Order In Council No. XVIII of 2020.

- (a) the client is an undertaking;
 - (b) a *per se* professional client; and
 - (c) they request such categorisation and the licensee undertakes an adequate assessment of the expertise, experience, and knowledge of the client which gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making their own investment decisions and understanding the risks involved; and
 - (d) the licensee has obtained express confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty.
- (4) A licensee may obtain a prospective counterparty's express confirmation that it agrees to be treated as an eligible counterparty either in the form of a general agreement or in respect of each individual transaction.

7.6.6 Providing clients with a higher level of protection

- (1) A licensee must accede to a client's request for re-categorisation as a client that benefits from a higher degree of protection.
- (2) A licensee may, either on its own initiative or at the request of the client concerned, –
 - (a) treat as a professional client, or a retail client, a client that might otherwise be categorised as a *per se* eligible counterparty;
 - (b) treat as a retail client a client that might otherwise be categorised as a *per se* professional client,

and the client will be re-categorised accordingly.

- (3) If a *per se* eligible counterparty requests treatment as a client whose business with the licensee is subject to conduct of business protections, but does not expressly request treatment as a retail client, and the licensee agrees to that request, the licensee must treat that eligible counterparty as a professional client.
- (4) The ways in which a client may be provided with additional protections under this rule include re-categorisation on –
 - (a) a general basis;
 - (b) a trade by trade basis;
 - (c) in respect of one or more specified rules;
 - (d) in respect of one or more particular services or transactions; or
 - (e) in respect of one or more types of product or transaction.

7.6.7 Policies, procedures, and records

- (1) A licensee must implement appropriate written internal policies, procedures, and controls to categorise its clients by either –
 - (a) issuing a standard notice to the client when they are given the client agreement. The licensee must keep a copy of the standard form for inspection while it is in use and for six years after the licensee ceases to use it; or
 - (b) by incorporating the notice in the text to the client agreement.
- (2) A licensee must make a record, in relation to each client, of –
 - (a) the categorisation established for the client under this rule; including sufficient information to support that categorisation;

- (b) evidence of despatch to the client of any notice required under these rules and, if such notice differs from the relevant standard form, a copy of the actual notice provided; and
 - (c) a copy of any agreement entered into with the client under this rule.
- (3) Any record made must be made at the time of categorisation and must be retained for at least six years after the licensee ceases to carry on business with or for that client.

7.7 Complaints

7.7.1 Complaints procedure

- (1) Every licensee must have in operation, and ensure compliance with, a written procedure for the effective consideration and fair and proper handling of any complaints relating to the licensee's insurance intermediary business.
- (2) The licensee must ensure that each of its officers and employees, responsible for dealing with clients, is aware of the procedure and of the obligation to follow it.

7.7.2 Notifications

- (1) If a complaint remains unsettled for longer than three months from the date of the licensee becoming aware of the complaint, the licensee must inform the Commission, within fourteen days, and must also advise the complainant that they may inform the Commission, directly, of the complaint.
- (2) The licensee must inform that Commission, within fourteen days, of it becoming aware of a significant complaint and must also advise the complainant that they may inform the Commission directly of the complaint.

- (3) The licensee must inform the Commission, within fourteen days, of it becoming aware of a series of complaints regarding any one employee; whether a current employee or not.
- (4) Where a licensee has given a substantive response, in relation to a complaint or a significant complaint, until the licensee receives an indication, from the complainant, that the response is unsatisfactory the licensee is entitled to treat the complaint as settled and resolved after the expiry of four weeks from the date of the response.

7.7.3 Record keeping

- (1) Every licensee must maintain a register of complaints which include sufficient detail to allow it to be able to demonstrate that it has dealt with, or is dealing with, the complaints in accordance with these Rules.

7.8 Professional indemnity insurance

7.8.1 Minimum requirement

- (1) Every licensee must maintain professional indemnity insurance with the following minimum limits –
 - (a) on the basis of each and every loss cover of at least £250,000; and
 - (b) on an annual basis, £1,000,000 or three times fee income, whichever is the greater, but the Commission reserves the right to vary, in writing, these amounts in relation to individual licensees, where it considers it appropriate to do so.
- (2) Where the deductible or excess exceeds £20,000, on the basis of each and every loss, the minimum capital requirement will increase to 125% of the deductible or excess.

7.8.2 Notifications to the insurer

- (1) A licensee must –
 - (a) when applying for cover, notify his professional indemnity insurer, through his broker where appropriate, of all material facts including and without limitation –
 - (i) details of any condition imposed on the licensee, under section 7 of the Law;
 - (ii) revocation of the licensee’s licence, under section 9 of the Law;
 - (iii) any regulatory penalty taken by the Commission against the licensee, or any of its directors or employees, under the FSC Law, or any of the Regulatory Laws;
 - (iv) any prohibition order made against the licensee, or any of its directors or employees;
 - (v) any criminal proceedings commenced against the licensee, or any of its directors or employees; or
 - (vi) any criminal or regulatory investigation or formal enquiry which involves the licensee, or any of its directors or employees;
 - (b) ensure that he complies with all warranties applying at the date of the commencement of his professional indemnity policies and any continuing warranties applying during the duration of the professional indemnity insurance policy; and
 - (c) ensure that they make all notifications and disclosures which are required to be made to his professional indemnity insurers during the duration of the policy pursuant to its terms and conditions.

- (2) A licensee must notify their professional indemnity insurers, through the broker where appropriate, within fourteen days of the following events, or any such earlier period as specified in the policy –
- (a) details of any conditions imposed on the licensee, under section 7 of the Law;
 - (b) revocation of the licensee’s licence, under section 9 of the Law;
 - (c) any regulatory penalty taken by the Commission against the licensee, or any of its directors or employees under the Law, the FSC Law, or any of the Regulatory Laws;
 - (d) any prohibition order made against the licensee, or any of its directors or employees;
 - (e) any criminal proceedings commenced against the licensee, or any of its directors or employees; and
 - (f) any criminal or regulatory investigation or formal enquiry which involves the licensee, or any of its directors or employees.

7.8.3 Notifications to the Commission

- (1) A licensee must notify the Commission of the following events, within seven days of becoming aware –
- (a) any actual or purported termination, avoidance, or invalidation of the licensee’s professional indemnity cover;
 - (b) any notification made by a licensee to his professional indemnity insurers with respect to a claim, or potential claim, which may be made by the licensee under its professional indemnity policy.

7.9 Conflicts of interest

7.9.1 Conflicts of interest policy

- (1) Licensees must establish, implement, and maintain an effective conflicts of interest policy; set out in writing and appropriate to the size and organisation of the licensee and the nature, scale, and complexity of its business.
- (2) Where the licensee is a member of a group, the policy must also take into account any circumstances of which the licensee is, or should be, aware which may give rise to a conflict of interest arising as a result of other members of the group.

7.9.2 Contents of the conflicts of interest policy

- (1) The conflicts of interest policy must include the following –
 - (a) it must identify, with reference to the specific insurance intermediary business carried out by or on behalf of the licensee, the circumstances which constitute, or may give rise to, a conflict of interest entailing a material risk of damage to the interest of one or more clients; and
 - (b) it must specify procedures to be followed to manage such conflicts.
- (2) Licensees must ensure that the procedures are designed to ensure that relevant persons engaged in insurance intermediary business, involving a conflict of interest, carry on that business at a level of independence appropriate to the size and organisation of the licensee and the nature, scale, and complexity of the business and of the group to which it belongs. They must include –
 - (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

- (b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict; or who otherwise represent different interests that may conflict, including those of the licensee;
 - (c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity where a conflict of interest may arise in relation to those activities;
 - (d) procedures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out insurance intermediary business; and
 - (e) procedures to prevent or control the simultaneous or sequential involvement of a relevant person in insurance intermediary business where such involvement may impair the proper management of conflicts of interest.
- (3) Licensees must ensure that the procedures adopted ensure the requisite degree of independence.
 - (4) Where procedures do not guarantee that a risk of damage to client interests will be prevented, the licensee must clearly disclose the general nature and sources of conflict of interest to the client before undertaking business on its behalf.
 - (5) Licensees must ensure that disclosure to clients includes sufficient detail, taking into account the nature of the client, to enable the client to make an informed decision with respect to the insurance intermediary business in the context of which the conflict of interest arises.

7.9.3 Record of services or activities giving rise to detrimental conflicts of interest

- (1) Licensees must keep an updated record of the insurance intermediary business carried out on behalf of the licensee in which a conflict of interest, entailing a material risk of damage to the interests of one or more clients, has arisen or may arise.

7.9.4 Gifts and inducements

- (1) This rule does not apply where a licensee provides services to a client who is an eligible counterparty.
- (2) A licensee must take reasonable steps to ensure that neither its directors, employees, nor any of its agents –
 - (a) offers or gives; or
 - (b) solicits or accepts,

any gift or other direct or indirect benefit which is likely to conflict significantly with any duties of the recipient, or the recipient's employer, owed to a client in connection with insurance intermediary business.

7.10 Notifications

7.10.1 Personnel

- (1) Where a person becomes –
 - (a) a director or controller of a licensee which is a company;
 - (b) a partner in a licensee which is a partnership;
 - (c) a manager who is connected with the licensee's insurance intermediary business in the Bailiwick;

- (d) a compliance officer in the Bailiwick; or
- (e) an authorised insurance representative; which includes a financial adviser,

the licensee must follow the requirements set out in sections 37 and 38 of the Law.

7.10.2 Name and address

- (1) A licensee must give written notice, to the Commission, within fourteen days of –
 - (a) a change in the registered, or equivalent, name of the licensee;
 - (b) a change in any business name under which the licensee carries on insurance intermediary business in the Bailiwick;
 - (c) a change in the address of the head office or principal place of business of the licensee;
 - (d) a change in the address of the registered office of the licensee; and
 - (e) a change in the address for the service of notices or documents.

7.10.3 Key employees

- (1) A licensee must notify the Commission, in writing and within fourteen days, of the fact that, and the date on which, any person has –
 - (a) become the secretary of the licensee, in the case of a Bailiwick company; or
 - (b) ceased to be –

- (i) a manager who is connected with the licensee's insurance intermediary business in the Bailiwick;
 - (ii) the secretary of the licensee, in the case of a Bailiwick company;
 - (iii) the compliance officer in Guernsey;
 - (iv) an authorised insurance representative or financial adviser.
- (2) A notice must include a statement of reasons for the change.

7.10.4 Information regarding key employees

- (1) A licensee must give written notice, to the Commission within fourteen days of it becoming aware of the following matters in relation to any individual, set out at rule 7.10.3 –
- (a) a change of name;
 - (b) the refusal of any application for, or revocation or suspension of, any licence, authorisation, or registration under any legislation relating to finance business;
 - (c) the imposition of disciplinary measures or sanctions by a regulatory authority, including a self-regulatory organisation or professional body, in relation to the individual's professional or business activities; and
 - (d) the making of an order by a court disqualifying that individual from serving as director of a company or from being concerned with the management of a company;
 - (e) any breach of the Code of Conduct for Financial Advisers by a financial adviser; or the Code of Conduct for Authorised Insurance Representatives by an authorised insurance representative.

- (2) A notice must include a statement of the circumstances and all known matters related to the reason for the notification.

7.10.5 Information regarding all employees

- (1) A licensee must give written notice to the Commission, within fourteen days, of it becoming aware of the occurrence of the following in relation to any of its employees –

- (a) a conviction of any offence involving fraud or other dishonesty;
- (b) a conviction of any offence under legislation relating to finance business; and
- (c) the institution of *saisie, désastre*, bankruptcy, sequestration, or similar proceedings.

- (2) A licensee must give written notice, within fourteen days, to the Commission of the summary dismissal of any employee in Guernsey and the reasons for this dismissal, which must include any employees under probation.

- (3) A record must be maintained of the names of any employees disciplined by a licensee in connection with any breach of the Law or rules, or with any other conduct which may reasonably be expected to affect the conduct of the licensee's insurance intermediary business, including particulars of –

- (a) the offence for which the employee was disciplined; and
- (b) steps taken to discipline the employee,

and details must be submitted, to the Commission, within seven days of the employee being disciplined.

- (4) Any record made for the purposes of this rule must be kept until six years have expired from the date on which the disciplinary steps were taken.

7.10.6 General

- (1) A licensee must give written notice, to the Commission, within fourteen days of the occurrence of any of the following –
 - (a) the presentation of an application for the winding-up, other than a petition for a voluntary winding-up for the purposes of reconstruction or amalgamation of; or administration order on, the licensee or a company which is a subsidiary of a holding company of the licensee;
 - (b) the appointment of a receiver, administrator, administrative receiver, or trustee of the licensee;
 - (c) the making of a composition or voluntary arrangement with creditors of the licensee;
 - (d) the granting, withdrawal, refusal of an application for, or revocation of, any licence, authorisation, or registration to carry on finance business under any legislation whether in Guernsey or elsewhere;
 - (e) the appointment of inspectors by a statutory or other regulatory authority, including a self-regulatory or recognised professional body, to investigate the affair of the licensee;
 - (f) the imposition of disciplinary measures or sanctions on the licensee or its directors, in relation to its finance business by any regulatory authority, including a self-regulatory organisation or recognised professional body;
 - (g) the bringing against any licensee, or its directors, of any material legal action or proceedings; or any arbitration to which the licensee is a party, relating to finance business;
 - (h) the conviction of the licensee of any offence under legislation relating to finance business, companies, or bankruptcy, or of any offence involving fraud or dishonesty; and

- (i) any breach of a solvency or insurance requirement and any other breach of the Minimum Criteria for Licensing under Schedule 4 to the Law.

7.10.7 Holding company

- (1) A licensee must give written notice to the Commission within fourteen days if it becomes, or ceases to be, a subsidiary of another company or entity. The notice must specify the following –
 - (a) the holding company's, or entity's, name;
 - (b) its principal business;
 - (c) the name of its directors; and
 - (d) the address of its registered office.

7.10.8 Subsidiaries

- (1) A licensee must give written notice, to the Commission, within fourteen days of the formation, acquisition, disposal, or dissolution of a subsidiary and it must specify –
 - (a) the subsidiary's name; and
 - (b) its principal business, if any.

7.10.9 Proposed change to the business plan

- (1) A licensee must give written notice, to the Commission, within fourteen days of any significant change in the business plan, irrespective of whether it requires any change to its licence.

7.10.10 Written notice

- (1) A licensee must give written notice and details to the Commission, within fourteen days, where it has reason to believe that –
 - (a) it will be unable to comply with, or be unable to demonstrate compliance with, the requirements of the Rules;
 - (b) a director or employee has been engaged in activities involving fraud or other dishonesty in relation to the licensee's insurance intermediary business in Guernsey;
 - (c) the licensee's auditor may qualify the accounts; or
 - (d) the liabilities of a subsidiary or holding company of the licensee exceed its assets.

PART 8 GENERAL PROVISION

8.1 Interpretation

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

“accounting reference date” means the date, or day, stated in the most recently published prospectus as the date, or day, on which the scheme’s annual accounting period is to end in each year;

“agent”, in relation to a licensee, means any person (including an employee) who acts under the instruction of a licensee;

“approved bank” means a person who is licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 2021, or is registered under the Banking Business (Jersey) Law, 1991, or authorised to undertake Class 1 Deposit-taking Business under the Isle of Man Financial Services Act 2008, or is authorised and regulated to carry on a banking or deposit-taking business under the Financial Services and Markets Act 2000, or under the law of any Member State, or under the law of any other country or territory which may be listed in notices issued from time to time by the Commission;

“block of business” means business that increases the receiving licensee’s, or reduces the transferring licensee’s, fee income by 15% or more; such figure being calculated using the last audited accounts of that licensee;

“client account” means an account –

- (a) at a bank or building society which holds, for one or more clients, money which is at the risk of the client;
- (b) in the name of the insurance intermediary;
- (c) which includes, in its title, an appropriate description to distinguish the money in the account from the money of the insurance intermediary; and
- (d) is a current or deposit account;

“client money” includes money of any currency which, in the course of carrying on insurance business, an insurance intermediary holds for, receives from, or owes to, a client;

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

“financial adviser” means an authorised representative, authorised by a licensee, to give advice to retail clients on long term insurance business;

“generally accepted accounting principles” refers to financial statements prepared in accordance with International Financial Reporting Standards, UK generally accepted accounting principles (“GAAP”) or US GAAP;

“insurance company” means a company licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2021;

“insurance intermediary business” means performing, by way of business, any of the activities defined in section 2(5) of the Law;

“insurer” includes a reinsurer or retrocessionaire;

“intermediary services” means activities undertaken in the course of carrying on insurance intermediary business;

“large undertaking” means an undertaking meeting two of the following criteria on a company basis, –

- (a) balance sheet total of £13,000,000;
- (b) net turnover of £26,000,000;
- (c) own funds of £1,300,000;

“long term insurance products” means any policy or product falling under Schedule 1 of the Law; excluding permanent health, credit life assurance, and any contracts on human life that are renewable annually;

“long term intermediary services” means activities undertaken in the course of carrying on long term insurance business;

“manager”, in relation to a person, means an employee who, under the immediate authority of his employer, is responsible either alone or jointly with one or more other persons for the conduct of the licensee’s insurance intermediary business;

“material records” means such records that would be necessary for the purposes of establishing a complete and accurate record of all aspects of a licensee’s conduct of insurance intermediary business. These include (without limitation) records of instructions, transactions, valuations, client correspondence, and advice;

“pension scheme” means a scheme approved under section 155 of the Income Tax (Guernsey) Law, 1975;

“permanent data” means such records, documents, or data as are considered material for the establishment and ongoing proper conduct of insurance intermediary business by a licensee. These include (without limitation); mandates and other agreements, client take-on documentation, client profiles, records relating to due diligence, other checks made, and the findings of such checks;

“professional investor” is –

- (a) a Government, local authority, public authority, or supra-national body (in the Bailiwick or elsewhere);
- (b) a person, partnership, or other unincorporated association or body corporate, (whether incorporated, listed, or regulated in an OECD country or otherwise) whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding, or disposing of investments whether as principal or agent, or the giving of advice on investments;
- (c) an affiliate of a Qualifying Investor Fund or an associate of the affiliate, i.e. financial services businesses or financial services professionals associated, directly or indirectly, with the operation of the fund in question; or
- (d) an individual investor who makes an initial investment of not less than US\$100,000, or equivalent, in the fund in question;

“pure protection product” means a long term insurance product, as defined in Schedule 1 of the Law, where the benefits are not determined by reference to –

- (a) the value of, or the income from, the value of property of any description; or
- (b) fluctuations in, or an index of, the value of property of any description;

“qualified auditor” means a person (partnership, body corporate, or an individual with a current practising certificate) who has a place of business in the Bailiwick and is a member of –

- (a) The Institute of Chartered Accountants in England and Wales;
- (b) The Institute of Chartered Accountants of Scotland;
- (c) The Institute of Chartered Accountants in Ireland;
- (d) The Association of Chartered Certified Accountants; or
- (e) a body outside the United Kingdom undertaking a similar regulatory role and having equivalent professional standards, for membership, as any of the above bodies;

“recognised professional body” means a body which regulates the practice of a profession; references to the practice of a profession do not include references to carrying on a business consisting wholly, or mainly, of insurance intermediary business;

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

“statement of professional standing” means a certificate issued by a body listed in the guidance note on training and competency schemes issued by the Commission;

“terms of business” means a documented record of the terms on which the licensee is prepared to provide the activities proposed to a client.

PART 9 SAVINGS, REVOCATIONS, CITATION, AND COMMENCEMENT

9.1 Savings

- (1) Any exclusion or modification granted by the Commission, under regulations and rules revoked under these Rules or The Insurance Business Managers Rules, 2021, will continue to apply where the Law and these Rules provide scope for such exclusions or modifications.

9.2 Revocations

9.2.1 Revocation of The Insurance Intermediaries (Conduct of Business) Rules, 2014

- (1) The Insurance Intermediaries (Conduct of Business) Rules, 2014 are revoked.

9.3 Citation and commencement

- (1) These rules may be cited as the Insurance Intermediaries Rules.
- (2) These rules come into force on 1st November 2021.

Dated this



C.A. SCHRAUWERS

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

SCHEDULE 1

THE PRINCIPLES OF CONDUCT OF FINANCE BUSINESS

1. Integrity

A licensee should observe high standards of integrity and fair dealing in the conduct of its business.

2. Skill, Care, and Diligence

A licensee should act with due skill, care, and diligence towards its customers and counterparties.

3. Conflicts of Interest

A licensee should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act, or otherwise. A licensee should not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the firm would place their interests above its own, the firm should live up to that expectation.

4. Information about Customers

A licensee should seek from customers it advises, or for whom it exercises discretion, any information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling it to fulfil its responsibilities to them.

5. Information for Customers

A licensee should take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable them to make a balanced and informed decision. A licensee should similarly be ready to provide a customer with a full and fair account of the fulfilment of its responsibilities to them.

6. Customer Assets

Where a licensee has control of, or is otherwise responsible for, assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

7. Market Practice

A licensee should observe high standards of market conduct and should also comply with any code of standard as in force and issued or approved by the Commission.

8. Financial Resources

A licensee should ensure that it maintains adequate financial resources to meet its finance business commitments and to withstand the risks to which its business is subject.

9. Internal Organisation

A licensee should organise and control its internal affairs in a responsible manner, keeping proper records, and where the firm employs staff, or is responsible for the conduct of finance business by others, should have adequate arrangements to ensure that they are suitable, adequately trained, and properly supervised and that it has well-defined compliance procedures.

10. Relations with Guernsey Financial Services Commission

A licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the firm which might reasonably be expected to be disclosed to it.

EXPLANATORY NOTE

These Rules have been re-drafted in line with the Commission's Revision of Laws Implementation Project.

Following the implementation of the 2020 Laws all Rules made, under the previous enactments, were checked for validity and legality. The Rules were re-drafted to bring them into line with the Commission's current legal drafting practice.

In the case of the Insurance Business Law 2002 a number of matters which were previously dealt with by Regulation had their status changed to being dealt with by Rules.

In order to reflect this change the Commission decided to consolidate all of the previously enacted Regulations into a single set of Rules.

These Rules have been re-drafted and re-formatted but the content and legal meaning remains the same as that under the previous Rules.