

THE INSURANCE MANAGERS RULES, 2021

Made: 1st November 2021

Coming into Force: 1st November 2021

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 Managers Rules, 2021 replace 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 Managers (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. 96 of 2014.

PART 2 LICENSING

2.1 Application for licence

- (1) An application for an insurance manager'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) details of any other forms of business to be undertaken;
 - (d) details of the jurisdictions in which the applicant intends to conduct business as an insurance manager.
- (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) 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) Licensed insurance managers who advise large clients, and not the general public, are not required to be registered as insurance intermediaries.
- (2) 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 manager's annual return

- (1) The annual return of a licensed insurance manager must comprise of the following –
 - (a) an original signed copy of the audited accounts;
 - (b) 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;
 - (c) an up-to-date list of all insurers licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002⁷, for which the manager has acted during any period covered by the annual return;
 - (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) confirmation that all material changes to personal questionnaire forms have been notified to the Commission;
 - (f) 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;

⁷ Order in Council No. XXI of 2002.

- (iii) any condition, subject to which the manager is licensed under the Law;
 - (g) if the manager is unable to give the confirmation set out above, details of any applicable breaches and what action, if any, has already been taken to remedy any applicable breaches; and
 - (h) that the accounts have been prepared and deposited in accordance with the Law.
- (2) The Commission is entitled to require that a licensed insurance manager 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 of client monies insurance intermediaries rules

- (1) Part 4, Client Monies, of The Insurance Intermediaries Rules 2021 applies to licensed insurance managers when acting as insurance intermediaries and who hold client money.

PART 5 MINIMUM CAPITAL REQUIREMENT

5.1 Minimum Capital Requirement of Licensees

- (1) The Minimum Capital Requirement of a licensed insurance manager 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 Application of Part 7

- (1) Rules, in this Part, which apply to **all insurance managers** are clearly marked.
- (2) The remaining rules in this Part apply to any insurance manager who advises or arranges insurance products in relation to the general public and is required to appoint an authorised insurance representative (“AIR”) and, for the purposes of this Part, the term AIR includes any individual authorised by a licensee as a financial adviser.

7.2 Authorised insurance representatives

- (1) A licensee must ensure that each AIR used by them complies with any applicable Codes of Conduct issued by the Commission.
- (2) A licensee must have in place a fair dealing policy to avoid any conflict of interest.
- (3) An AIR must explain charges in respect of long term business, including but not limited to life cover charges, commissions, and surrender penalties, to a client and provide the information required without delay.
- (4) A licensee must provide the Commission with the following details for each AIR authorised by them –
 - (a) name;
 - (b) date of birth;
 - (c) qualifications; and

- (d) previous employment,

within ten business days of initial authorisation and of any changes. Any notification must be accompanied by an explanation for the change.

- (5) An AIR must hold such qualifications to the minimum standard as determined by the Commission or satisfy such requirements as the Commission may determine.
- (6) A licensee must require that each AIR used provides prospective clients with the following information –
 - (a) the name of the AIR;
 - (b) who the AIR represents; and
 - (c) what type of products the AIR is authorised to sell or advise on.
- (7) A licensee must ensure that detailed records of information received from, and provided to, a client are maintained.

7.3 Advertisements

- (1) A licensee must ensure that an advertisement –
 - (a) does not contain any statement, promise, or forecast which is untrue, misleading, or extravagant;
 - (b) is not designed in such a way as to distort or conceal any relevant subject material;
 - (c) is clearly recognisable as an advertisement;
 - (d) is not likely to be misunderstood;

- (e) where appropriate, states that the investment value is not guaranteed or that the value may fluctuate; and
- (f) 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 that past performance is not necessarily a guide to future performance.
- (2) The regulatory status of the licensee is to be included on all communications including, but not limited to, advertisements and letters sent out on headed paper.

7.4 Complaints

- (1) Where a licensee arranges or issues insurance policies on behalf of an insurer to the general public, they must be able to demonstrate that they have procedures in place for dealing with customer complaints which set out, at a minimum –
 - (a) that in the event of a complaint being received by the licensee, the AIR concerned and the person to whom they report must be advised of the complaint and of the need to handle it;
 - (b) that where a satisfactory response is not issued within 30 day of the complaint, the complaint must be directed to a member of the board of the licensee;
 - (c) that where a satisfactory response is not issued within 30 days of the complaint being referred to a member of the board, the licensee must inform the complainant of their rights and procedures to pursue the complaint further;

- (d) that where a satisfactory response is not issued within 90 days of the complaint, the licensee must notify the Commission, in writing, of the details of the complaint; and
 - (e) appropriate information must be provided to the client to enable them to contact the parties detailed above.
- (2) The licensee must maintain a register of all written client complaints, and any verbal complaints not resolved within 24 hours, and the register must contain, at a minimum –
- (a) details of whether the complaint relates to the service provided by the licensee or the advice provided by the licensee; and
 - (b) the status of the complaint and the actions taken to resolve it.

7.5 Professional indemnity insurance

- (1) Licensees 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.
- (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.
- (3) A licensee must –
- (a) when applying for cover, notify his professional indemnity insurer, through their professional indemnity insurance broker, of all material facts, which must include –

- (i) the details of any condition imposed on the licensee under section 7 of the Law;
 - (ii) the 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 Financial Services Commission (Bailiwick of Guernsey) Law, 1987⁸ ("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; and
 - (vi) any criminal or regulatory investigation or formal enquiry which involves the licensee, or any of its directors or employees;
- (b) ensure that they comply with all warranties applying at the date of the commencement of the professional indemnity policies and any continuing warranties applying during the duration of the professional indemnity insurance policy;
 - (c) ensure that they make all notifications and disclosures which are required to be made to their professional indemnity insurers during the duration of the policy pursuant to its terms and conditions.
- (4) A licensee must notify their professional indemnity insurers, through the broker where appropriate, within fourteen days of the following events, or such earlier period as is specified in the professional indemnity policy, -

⁸ Order In Council No. XXX of 1987.

- (a) the details of any conditions imposed on the licensee under section 7 of the Law;
 - (b) the 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.
- (5) A licensee must notify the Commission of the following events immediately –
- (a) any actual or purported termination, avoidance, or invalidation of the licensee's professional indemnity cover; or
 - (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.

7.6 Reporting to the Commission

- (1) **All insurance managers** must obtain prior written consent, from the Commission, for any changes to outsourcing arrangements.
- (2) **All insurance managers** must inform the Commission, within seven days, of –

- (a) the instigation of any criminal proceedings against the licensee, any of its directors or employees;
 - (b) any involvement, in any way, of any of its directors or employees in any regulatory or criminal investigation or enquiry; and
 - (c) any material change to the business plan.
- (3) **All insurance managers** must notify the Commission of the following events and provide a plan for remedial action –
- (a) any breaches of a solvency or insurance requirement and any other breach of the Minimum Criteria for Licensing under Schedule 4 of the Law; and
 - (b) any cancellation, invalidation, or avoidance of in-force professional indemnity insurance cover.
- (4) Licensees must obtain prior written consent, from the Commission, in respect of –
- (a) any change of any director, controller, partner, MLRO, or compliance officer; and
 - (b) any transfer of a block of business to or from a licensee, where such transfer has occurred at the licensee's instigation, and for the purposes of this rule a block of business means business which increases or reduces the brokerage turnover, or fee income, of the licensee by 15% or more, such figure being calculated using the latest audited accounts.
- (5) The following events require notification, to the Commission, within seven days –

- (a) any change to the registered office;
 - (b) any complaints that remain unsatisfied after 90 days;
 - (c) any breach of any applicable overseas legislation, rules, or codes of which the licensee is aware;
 - (d) any breach of the Code of Conduct for Authorised Insurance Representatives by an AIR used by the licensee;
 - (e) any change in the delegated authorities granted to the licensee, such as claims handling; and
 - (f) any litigation or arbitration proceedings commenced against the licensee and any other claims which are made or asserted against them.
- (6) The Commission must be notified, within fourteen days, of any change in the AIR or auditor.

7.7 Compliance officers

- (1) Licensees must appoint a compliance officer who must –
- (a) be approved by the Commission prior to their appointment;
 - (b) be sufficiently knowledgeable and experienced to perform the role, taking into account the size of the licensee and the classes, volume, and complexity of business handled by the licensee; and
 - (c) have a clear, defined, job specification setting out responsibilities in writing, which includes ensuring that the activities of the AIR are reviewed and managed by suitably qualified and experienced individuals, and, although the use of an outsourced compliance function may be permitted, the board of the licensee retains responsibility for compliance.

7.8 Training and competence

- (1) Licensees must create and implement a training and competence scheme for all AIRs appropriate to the nature and scale of the licensee's business.
- (2) The scheme should ensure that AIRs are fully aware of, and conversant with, the products and services provided and the advantages and disadvantages, for clients, of purchasing those products.
- (3) Licensees, in conjunction with their AIRs, must maintain a training log in respect of each AIR.

7.9 Outsourcing arrangements

- (1) Where outsourcing arrangements are entered into by a licensee, the licensee must remain responsible and accountable for compliance with the Law and any applicable regulations, rules, and codes.
- (2) The outsourcing arrangement must not impair the Commission's ability to supervise the licensee.
- (3) Before entering into an outsourcing arrangement –
 - (a) a licensee must –
 - (i) conduct suitable due diligence processes regarding its financial condition and expertise when selecting an appropriate third party service provider; and
 - (ii) ensure appropriate internal procedures are developed to monitor its ongoing performance;

- (b) there must be a legally binding contract between the licensee and each third party service provider, the nature and detail of which must be appropriate to the materiality of the outsourced activity to the ongoing business of the licensee, and the contract must contain provisions relating to its termination;
- (c) a licensee must take appropriate measures to determine that –
 - (i) procedures are in place to protect the licensee’s intellectual property rights in its software; and
 - (ii) its third party service providers establish and maintain emergency procedures and a plan for disaster recovery, with periodic testing of backup facilities;
- (d) the licensee must take appropriate steps to require that service providers protect confidential information regarding the licensee’s proprietary and other information, as well as the licensee’s clients or investors, from intentional or inadvertent disclosure to unauthorised individuals;
- (e) the licensee must decide upon appropriate exit strategies to ensure a smooth transition of the outsourced operations; and
- (f) the Commission, the licensee, and its auditors must have access to the books and records maintained by third party service providers, relating to the outsourced activities, and the Commission must be able to obtain promptly, on request, information concerning the outsourced activities that are relevant to its regulatory oversight.

7.10 Record keeping

- (1) **All insurance managers must maintain legible and orderly files of –**

- (a) all correspondence and due diligence material which are required under the Criminal Justice (Proceeds of Crime) Law, 1999⁹ or The Handbook on Countering Financial Crime and Terrorist Financing; and
- (b) copies of correspondence with clients,

which must be available for inspection by the Commission, in the Bailiwick, within 72 hours.

- (2) **All insurance managers** must ensure that any client correspondence remains on a client file for the duration of the period of the insurance policy sold to that client and for the period of time within which claims can be brought against the licensee in accordance with the prevailing prescription period.
- (3) Where a policy is cancelled, lapsed, partially, or fully withdrawn, details of such occurrences must be maintained, together with an explanation of the reasons for such occurrences, or evidence that such an explanation has been sought, even if not received. This information must be available, for inspection by the Commission, within 72 hours.

7.11 Insolvency

- (1) In the event of the insolvency of a licensed insurer, or a recognised insurer used by a licensee, the licensee must take all reasonable steps to ensure that the client is aware of the situation and provide the client with appropriate advice.

⁹ Order In Council No. VIII of 1999.

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;

“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;

“insurance manager business” means the provision of managerial functions (including administration and underwriting) to any insurer of such other functions as may be prescribed by the Commission;

“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.

PART 9 SAVINGS, REVOCATIONS, CITATION, AND COMMENCEMENT

9.1 Savings

- (1) Any exclusion or modification granted by the Commission, under the regulations and rules revoked by rule 9.2, will continue to apply where the Law and these Rules provide scope for such exclusions or modifications.

9.2 Revocations

9.2.1 The Insurance Managers and Insurance Intermediaries (Licensing) Regulations, 2002

- (1) The Insurance Managers and Insurance Intermediaries (Licensing) Regulations, 2002 are revoked.

9.2.2 The Insurance Managers and Insurance Intermediaries (Annual Return) Regulations, 2008

- (1) The Insurance Managers and Insurance Intermediaries (Annual Return) Regulations, 2008 are revoked.

9.2.3 The Insurance Managers and Insurance Intermediaries (Client Money) Regulations, 2008

- (1) The Insurance Managers and Insurance Intermediaries (Client Money) Regulations, 2008 are revoked.

9.2.4 The Insurance Managers and Intermediaries (Approved Assets) Regulations, 2008

- (1) The Insurance Managers and Intermediaries (Approved Assets) Regulations, 2008 are revoked.

9.2.5 The Insurance Managers (Conduct of Business) Rules, 2014

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

9.3 Citation and commencement

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

Dated this 29th day of October 2021



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.